Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 7 DECEMBER 26, 1973 No. 52

This issue contains

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Facilities Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price 65 cents (single copy). Subscription price: $33.20 a year; $8.30 additional for foreign mailing.

U.S. Customs Service

(T.D. 73-336)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 6, 1973.

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/ area director; amount
Atlantic Coast Agencies, Inc. (N.Y. Corp.), 17 Battery Place, N., New York, N.Y., Federal Ins. Co.	Nov. 15, 1973	Nov. 15, 1973	New York Seaport; $10,000
The Boeing Co., Box 3707, Seattle, Wash.; Safeco Ins. Co. of America	Sept. 24, 1973	Nov. 1, 1973	Seattle, Wash.; $10,000
Costa International Corp. (N.Y. Corp.), 2095 Broadway, New York, N.Y., Peerless Ins. Co.	Oct. 30, 1973	Nov. 1, 1973	New York Seaport; $10,000
Hohenstein Shipping Co., P.O.B. 2468, Savannah, Ga.; Fireman's Fund Ins. Co. (PB 10/30/70) D 10/30/73 [1]	Oct. 30, 1973	Oct. 9, 1973	Savannah, Ga.; $10,000
North Shore Bottling Co., Inc., 97-46 91 St., Ozone Park, Queens, N.Y.; St. Paul Fire & Marine Ins. Co. D 11/5/73	June 17, 1965	June 17, 1965	New York, N.Y.; $10,000
Northwestern Glass, 5801 E. Marginal Way, S., Seattle, Wash.; St. Paul Fire & Marine Ins. Co.	Nov. 8, 1972	Nov. 8, 1972	Seattle, Wash.; $10,000
Turturici, Inc., 1055 Old County Rd., San Carlos, Calif.; St. Paul Fire & Marine Ins. Co.	Sept. 26, 1973	Oct. 11, 1973	San Francisco, Calif.; $10,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/ area director; amount
Hiram Walker Importers, Inc., 8325 Jefferson East, Detroit, Mich.; St. Paul Fire & Marine Ins. Co. (PB 10/14/66) D 9/11/73	Sept. 7, 1973	Sept. 11, 1973	Detroit, Mich.; $10,000

[1] Surety is Insurance Co. of North America.

(BON-3-10)

LEONARD LEHMAN,
Assistant Commission,
Regulations and Rulings.

(T.D. 73-337)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and textile products in certain categories manufactured or produced in Pakistan.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 10, 1973.

There is published below the directive of November 30, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles and textile products in certain categories manufactured or produced in Pakistan. This directive amends but does not cancel that Committee's directive of June 29, 1973 (T.D. 73-183).

This directive was published in the Federal Register on December 5, 1973 (38 FR 33524), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director, Appraisement
and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

November 30, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20029

DEAR MR. COMMISSIONER:

This directive amends but does not cancel the directive issued to you on June 29, 1973 by the Chairman, Committee for the Implementation

of Textile Agreements, concerning imports into the United States of cotton textiles and cotton textile products in certain categories produced or manufactured in Pakistan.

The first paragraph of the directive of June 29, 1973 is amended, effective as soon as possible, to read as follows:

"Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the bilateral Cotton Textile Agreement of May 6, 1970, as amended, between the Governments of the United States and Pakistan, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective July 1, 1973 and for the twelve-month period extending through June 30, 1974, entry for consumption of cotton textiles and cotton textile products in Categories 9/10, 15/16, 18/19, and part of 26, 22/23, parts of 26, part of 31, and 41/42, produced or manufactured in Pakistan in excess of the following designated levels of restraint:

Category	*Amended Twelve-Month Levels of Restraint* [1]
9/10	42,608,000 syds
15/16	3,600,000 syds
18/19 and part of 26 (printcloth) [2]	18,815,000 syds
22/23	4,800,000 syds
Part of 26 (bark cloth) [3]	7,200,000 syds
Part of 26 (duck) [4]	10,190,000 syds
Part of 31 (only T.S.U.S.A. No. 366.2740)	9,574,713 pieces
41/42	815,593 dozen pieces"

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textiles and cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the

---

[1] These levels have not been adjusted to reflect any entries on or after July 1, 1973.

[2] In Category 26, only T.S.U.S.A. Nos.:

320.—34	322.—34	327.—34
321.—34	326.—34	328.—34

[3] Only T.S.U.S.A. Nos.:

320.—88	325.—88	330.—88	323.—92	328.—92
321.—88	326.—88	331.—88	324.—92	329.—92
322.—88	327.—88	320.—92	325.—92	330.—92
323.—88	328.—88	321.—92	326.—92	331.—92
324.—88	329.—88	322.—92	327.—92	

[4] Only T.S.U.S.A. Nos.:

320.—01 through 04, 06, 08	326.—01 through 04, 06, 08
321.—01 through 04, 06, 08	327.—01 through 04, 06, 08
322.—01 through 04, 06, 08	328.—01 through 04, 06, 08

Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

---

(T.D. 73-338)

Ports of entry—Customs Regulations amended

Changes in the Customs Field Organization, section 1.2(c), Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
Washington, D.C., December 4, 1973.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 1—GENERAL PROVISIONS

On August 15, 1973, there was published in the Federal Register (38 FR 22032), a notice of a proposed change in Customs Region VIII, which would consolidate the Portland, Oregon, Astoria, Oregon, and Longview, Washington, Customs ports of entry into a single Columbia River (Portland, Astoria, Longview) Customs port of entry. After consideration of the comments received from the public, no changes were deemed necessary.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to authority provided by Treasury Department Order No. 190, Rev. 9 (38 FR 17517), the Columbia River (Portland, Astoria, Longview) Customs port of entry is established. The geographical limits of the new port encompass all of the area falling, before this consolidation, within the port limits of Portland, Oregon, Astoria, Oregon, and

Longview, Washington, and in addition include all points and places on either bank of the Columbia River, bounded on the west by the Pacific Ocean, and terminating on the north bank at the eastern corporate limits of Washougal, Washington, and on the south bank at the eastern boundary of the Portland International Airport.

To reflect this change, the table in section 1.2(c) of the Customs Regulations, is amended by substituting "Columbia River (Portland, Astoria, Longview) (including territory described in T.D. 73-338)" for "PORTLAND, OREG. (including territory described in E.O. 3390, Jan. 24, 1921; E.O. 5193, Sept. 14, 1929 and T.D. 53033).", "Astoria, Oreg. (E.O. 5193, Sept. 14, 1929).", and "Longview, Wash. (E.O. 4956, Aug. 31, 1928) (including territory described in E.O. 5193, Sept. 14, 1929, and T.D. 53514).", in the column headed "Ports of entry" in the Portland, Oregon, district (Region VIII).

(Sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended; 19 U.S.C. 1, 2)

It is desirable to make the Customs port of entry available to the public as soon as possible. Therefore, good cause is found for dispensing with the delayed effective date provision of 5 U.S.C. 553(d).

Effective date. This amendment shall be effective on December 13, 1973.

(ADM-9-03)

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register December 13, 1973 (38 FR 34324)]

(T.D. 73-339)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 10, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 percentum or more from the quarterly rate published in Treasury Decision 73-294 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs

purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Austria schilling:	
December 3, 1973	$0.0516
December 4, 1973	.0515
December 5, 1973	.0514
December 6, 1973	.0516
December 7, 1973	.0516
Belgium franc:	
December 3, 1973	$0.025145
December 4, 1973	.024875
December 5, 1973	.024950
December 6, 1973	.025035
December 7, 1973	.024940
Denmark krone:	
December 3, 1973	$0.1623
December 4, 1973	.1608
December 5, 1973	.1615
December 6, 1973	.1617
December 7, 1973	.1610
France franc:	
December 3, 1973	$0.2222
December 4, 1973	.2202
December 5, 1973	.2204
December 6, 1973	.2212
December 7, 1973	.2201
Germany deutsche mark:	
December 3, 1973	$0.3806
December 4, 1973	.3784
December 5, 1973	.3791
December 6, 1973	.3808
December 7, 1973	.3794
Italy lira:	
December 3, 1973	$0.001646
December 4, 1973	.001632
December 5, 1973	.001631
December 6, 1973	.001642
December 7, 1973	.001644

Japan yen:	
December 3, 1973	$0.003570
December 4, 1973	.003570
December 5, 1973	.003570
December 6, 1973	.003570
December 7, 1973	.003570
Netherlands guilder:	
December 3, 1973	$0.3596
December 4, 1973	.3555
December 5, 1973	.3571
December 6, 1973	.3576
December 7, 1973	.3557
Portugal escudo:	
December 3, 1973	$0.0400
December 4, 1973	.0400
December 5, 1973	.0398
December 6, 1973	.0398
December 7, 1973	.0398
Sweden krona:	
December 3, 1973	$0.2241
December 4, 1973	.2214
December 5, 1973	.2226
December 6, 1973	.2229
December 7, 1973	.2220
Switzerland franc:	
December 3, 1973	$0.3122
December 4, 1973	.3115
December 5, 1973	.3130

(LIQ-3-O:A:E)

JAMES D. COLEMAN,
Acting Director, Appraisement and Collections Division.

[Published in the Federal Register December 17, 1973 (38 FR 34675)]

526-327—73——2

(T.D. 73-340)

Bonded Carriers

Approval and discontinuance of carrier bonds, Customs Form 3587

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 11, 1973.

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/ area director; amount
Acme Fast Freight, Inc., and Acme Freight, Inc., 156 William St., New York, N.Y., motor carrier; Maryland Casualty Co. of Baltimore, Md. (PB 4/24/42) D 11/5/73 [1]	July 25, 1973	Nov. 5, 1973	St. Louis, Mo., $25,000
B. N. Corkum Transportation Co., Inc., 274 Medford St., Malden, Mass., motor carrier; The Aetna Casualty & Surety Co. D 11/23/73	Oct. 31, 1969	Nov. 24, 1969	Boston, Mass., $25.000
C & J Commercial Driveaway, Inc., 2400 W. St. Joseph St., Lansing, Mich., motor carrier; Liberty Mutual Ins. Co.	Nov. 1, 1973	Nov. 8, 1973	Detroit, Mich.; $50,000
Wilbur G. Frazier, Sr. & Wilbur G. Frazier, Jr. dba W. G. Frazier & Son, 1500 S. Zarzamora, San Antonio, Tex., motor carrier; National Surety Corp.	Oct. 26, 1972	Nov. 5, 1973	Laredo, Tex.; $25,000
Gringo Pass, Inc., P.O.B. 266, Gringo Pass, Ariz., motor carrier; Hartford Accident & Indemnity Co.	Nov. 13, 1973	Nov. 20, 1973	Nogales, Arizona; $25,000
Herrin Transfer & Warehouse Co., Inc., 1305 Marshall St., Shreveport, La., motor carrier; The Travelers Indemnity Co. D 11/12/73	Oct. 20, 1972	Nov. 6, 1972	Houston, Tex.; $25,000
North Central Airlines, Inc., Minneapolis, Minn., air carrier; Agricultural Ins. Co. D 2/1/73	May 19, 1970	June 12, 1970	Minneapolis, Minn.; $25,000
Northernair Freight Service, Inc., 12 Home Ave., Burlington, Vt., motor carrier; Fidelity & Deposit Co. of Md. D 1/17/74	Jan. 17, 1972	Jan. 28, 1972	St. Albans, Vt.; $25,000
Pat's Truck Brokerage, P.O.B. 687, Pharr, Tex., motor carrier; U.S. Fire Ins. Co.	Oct. 3, 1973	Nov. 6, 1973	Laredo, Tex.; $25,000
Republic Truck Lines, Inc., 153 W. Avery St., Dallas, Tex., motor carrier; Employers Commercial Union Ins. Co. of America. D 11/23/73	Jan. 15, 1970	Jan. 11, 1971	Houston, Tex.; $25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/ area director; amount
Shell Pipe Line Corp., P.O.B. 20329, Houston, Tex., pipe line; Travelers Indemnity Co.	Oct. 29, 1973	Nov. 19, 1973	New Orleans, La.; $50,000
Southeast Air Parcel Service, Inc., Herndon Airport, Orlando, Fla., air carrier; The Home Indemnity Co. D 11/21/73	June 7, 1973	June 12, 1973	Miami, Fla.; $25,000
John Petraglia dba Southern California, Warehouse Co., 524 E. San Ysidro Blvd., San Ysidro, Calif., motor carrier; St. Paul Fire & Marine Ins. Co.	Nov. 7, 1973	Nov. 13, 1973	San Diego, Calif.; $25,000
The Youngstown Cartage Co., 825 W. Federal St., Youngstown, Ohio, motor carrier; St. Paul Fire & Marine Ins. Co. D 11/8/73	Nov. 27, 1972	Nov. 29, 1972	Detroit, Mich.; $50,000

[1] Surety is Federal Ins. Co.

(BON-3-03)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 73-341)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, D.C., December 10, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

Hong Kong dollar:	*Official*	*Free*
November 12, 1973----	$0.1975	$0.196753*
November 13, 1973----	.1975	.196850*
November 14, 1973----	.1975	.196656*
November 15, 1973----	.1950	.197044*
November 16, 1973----	.1965	.196947*

*Certified as nominal.

Iran rial:

For the period November 26 through November 30, 1973, rate of $0.0149.

Philippine peso:

For the period November 26 through November 30, 1973, rate of $0.1480.

Singapore dollar:

November 26, 1973	$0.4040
November 27, 1973	.4040
November 28, 1973	.4070
November 29, 1973	.4065
November 30, 1973	.4065

Thailand baht (tical):

For the period November 26 through November 30, 1973, rate of $0.0490.

(LIQ-3-O:A:E)

JAMES D. COLEMAN,
Acting Director, Appraisement and Collections Division.

(T.D. 73-342)

Synopses of Drawback decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 11, 1973.

The following are synopses of drawback rates and amendments issued July 12 to November 29, 1973, inclusive; pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations; and approvals under section 22.6, Customs Regulations.

(DRA-1-09)

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

(A) *Arc chute assemblies for circuit breakers.*—T.D. 54452-J, as amended, covering, among other things, gasoline and diesel fueled internal combustion engines manufactured under section 1313(b) by

Allis-Chalmers Corp., West Allis, Wis., at its Harvey, Ill., factory, with the use of sleeves, crankshafts, connecting rods, cylinder blocks, cylinder heads, and fuel injection pumps, further *amended* to cover arc chute assemblies for circuit breakers manufactured by the corporation under section 1313 (b) at its factory located at West Allis, Wis., with the use of barrier stack porcelain sub-assemblies.

Amendment effective on articles manufactured on and after June 1, 1972, and exported on and after August 15, 1972.

Manufacturer's supplemental statement of October 25, 1973, forwarded to Regional Commissioners of Customs, New York, N.Y., and Chicago, Ill., November 29, 1973.

(B) *Greases and compounded oils.*—Manufactured under section 1313 (b) by International Lubricant Corp., New Orleans, La., at its Jefferson Parish, La., factory, with the use of various stock oils.

Rate effective on articles manufactured and exported on and after January 1, 1968.

Manufacturer's statements of October 9, 1972, and July 24, 1973, forwarded to Regional Commissioners of Customs, Houston, Tex., and New York, N.Y., August 17, 1973.

(C) *Motor fuel antiknock compounds.*—T.D. 55437–M, as amended, covering, among other things, motor fuel antiknock compounds, manufactured under section 1313 (b) by Ethyl Corp., Richmond, Va., at its various factories with the use of pig lead, further *amended* to cover motor fuel antiknock compounds manufactured under section 1313 (b) by the company at its Baton Rouge, La., and Pasadena, Tex., factories, with the use of ethylene dichloride.

Amendment effective on articles manufactured on and after October 15, 1973, and exported on an after November 1, 1973.

Filing of supplemental schedules authorized.

Manufacturer's supplemental statement of October 31, 1973, forwarded to Regional Commissioner of Customs, New Orleans, La., November 13, 1973.

(D) *Musk ambrette.*—T.D. 49126–J, as amended, covering among other things, bis(5-chloro-2-hydroxy-phenyl) methane manufactured under section 1313(b) by Givaudan Corp., Clifton, N.J., with the use of para chlorophenol, and on hexachlorophene manufactured under section 1313(b) with the use of trichlorophenol, further *amended* to cover musk ambrette manufactured under section 1313 (b) by the said company with the use of meta cresol pure.

Amendment effective on articles manufactured and exported on and after September 1, 1972.

Supplemental statement of October 15, 1973, forwarded to Regional Commissioner of Customs, New York, N.Y., November 14, 1973.

(E) *Neckwear.*—Manufactured under section 1313 (b) by Schoenfeld Neckwear Co., Seattle, Wash., with the use of greige piece goods.

Rate effective on articles manufactured on and after August 1, 1972, and exported on and after May 25, 1973.

Manufacturer's drawback statements of August 10 and October 17, 1973, forwarded to Regional Commissioner of Customs, San Francisco, Calif., November 13, 1973.

(F) *Nylon staple, nylon yarn, nylon spinning polymer, and nylon molding compounds.*—Manufactured under section 1313(b) by Allied Chemical Corp., Morristown, N.J., at its Columbia, S.C., and Hopewell, Va., factories, with the use of molten caprolactam monomer.

Rate effective on articles manufactured and exported on and after September 14, 1973.

Manufacturer's statement of October 12, 1973, forwarded to the Regional Commissioner of Customs, New York, N.Y., November 13, 1973.

(G) *Parts and assemblies for automobiles, trucks, coaches, locomotives, off-the-highway equipment and similar articles.*— T. D. 55003–A, as amended by T. D.'s 55035–C, 55046–A, 55164–A, and 55397–A, covering the allowance of drawback on, among other things, automobiles and trucks manufactured under section 1313 (b) by General Motors Corp., Detroit, Mich., at its various factories with the use of automobile and truck parts and with the use of automobile and truck assemblies manufactured therefrom, further *amended* to cover parts and assemblies for automobiles, trucks, coaches, locomotives, off-the-highway equipment, engines and similar articles manufactured under section 1313 (b) by the corporation at its factories located at Lockport and Buffalo, N.Y., with the use of copper foil and with the use of copper alloy foil.

Amendment effective on articles manufactured on and after March 10, 1970, and exported on and after March 25, 1970.

Manufacturer's supplemental statements of May 23 and November 5, 1973, forwarded to Regional Commissioner of Customs, Chicago, Ill.. November 16, 1973.

(H) *Plastic materials, flexible compounds, rigid compounds, geon polyblend, abson resins and compounds, hi-temp resins and compounds, and estane resins and compounds.*—Manufactured under section 1313 (b) by B. F. Goodrich Co., Akron, Ohio, at its Calvert City and Louis-

ville, Ky.; Henry, Ill.; Avon Lake, Ohio; Pedriktown, N.J.; and Long Beach, Calif., factories, with the use of propane.

Rate effective on articles manufactured and exported on and after January 1, 1970.

Manufacturer's statement of October 2, 1973, forwarded to Regional Commissioner of Customs, Baltimore, Md., November 16, 1973.

(I) *Resins, alkyd and polyester.*—T.D. 51767–R, as amended, covering, among other things, plasticizers manufactured under section 1313 (b) by Reichhold Chemicals, Inc., White Plains, N.Y., at its Cambridge, Mass., factory, with the use of phthalic anhydride, adipic acid and isooctyl alcohol, further *amended* to cover alkyd and polyester resins manufactured under section 1313 (b) with the use of maleic anhydride.

Amendment effective on articles manufactured on and after August 20, 1972, and exported on and after August 28, 1972.

Supplemental statement of October 25, 1973, forwarded to Regional Commissioner of Customs, New York, N.Y., November 9, 1973.

(J) *Rod or wire, welding.*—T.D. 56506–M, as amended by T.D. 68–117–F, covering, among other things, cast tungsten carbide shapes manufactured under section 1313 (b) by Stoody Co., Whittier, Calif., with the use of tungsten, further *amended* to cover welding rod or wire manufactured by the company under section 1313 (b) with the use of cold rolled steel strip.

Amendment effective on articles manufactured on and after January 30, 1973, and exported on and after July 10, 1973.

Supplemental statement of September 5, 1973, forwarded to Regional Commissioner of Customs, Los Angeles, Calif., November 29, 1973.

(K) *Tantalum oxide, columbium oxide, potassium fluotantalate, tantalum and columbium products, and columbium and tantalum alloys.*—Manufactured under section 1313 (b) by Teledyne Wah Chang Albany Corp., Albany, Ore., with the use of tantalum/columbium bearing ores and concentrates.

Rate effective on articles manufactured on and after October 13, 1969, and exported on and after October 19, 1970.

Manufacturer's statements of August 6, 1971, and September 27, 1973, forwarded to Regional Commissioner of Customs, New York, N.Y., November 9, 1973.

(L) *Weed killer.*—Manufactured under section 1313 (b) by the Dow Chemical Co., Midland, Mich., with the use of dinitro-ortho-secondary butyl-phenyl (DNOSBP).

Rate effective on articles manufactured on and after July 6, 1973, and exported on and after July 23, 1973.

Manufacturer's statement of August 3 and October 29, 1973, forwarded to Regional Commissioner of Customs, Chicago, Ill., November 14, 1973.

(M) *Windshields and vent front door, rear quarter and rear windows for automobiles.*—T.D. 73–236–V, covering vent front door windows and rear quarter windows for automobiles manufactured by Hordis Bros., Inc., Pennsauken, N.J., and on rear windows and windshields for automobiles manufactured by the company at its factory located at Lancaster, Ohio, all the foregoing with the use of sheet glass, *amended* to provide for a change in the first date of exportation.

Amendment effective on articles manufactured on and after June 29, 1970, and exported on and after July 3, 1970.

Manufacturer's supplemental statement of July 6, 1973, forwarded to Regional Commissioner of Customs, New York, N.Y., July 12, 1973.

Approvals under section 22.6, Customs Regulations

(1) *Petroleum products.*—T.D. 67–227(1), as amended by T.D. 67–260(1), covering petroleum products manufactured under section 1313 (b) by American Oil Co., (Maryland), Chicago, Ill., at its various refineries with the use of crude petroleum and petroleum derivatives, further *amended* to cover such articles manufactured under section 1313 (b) by Amoco Oil Co. (Maryland), Chicago, Ill., *successor*, at its above refineries with the use of crude petroleum or petroleum derivatives.

Amendment effective on articles manufactured on and after January 1, 1960, and exported on and after December 31, 1972.

Manufacturer's supplemental statement of August 8, 1973, forwarded to Regional Commissioner of Customs, Chicago, Ill., November 6, 1973.

(2) *Petroleum products.*—T.D. 67–227(2), covering petroleum products manufactured under section 1313 (b) by American Oil Co., (Texas), Chicago, Ill., at its Texas City, Tex., refinery, with the use of crude petroleum and petroleum derivatives, *amended* to cover such articles manufactured under section 1313 (b) by Amoco Oil Co. (Texas), Chicago, Ill., *successor*, at its above refinery with the use of crude petroleum or petroleum derivatives.

Amendment effective on articles manufactured on and after January 1, 1960, and exported on and after December 31, 1972.

Manufacturer's supplemental statement of August 8, 1973, forwarded to Regional Commissioner of Customs, Chicago, Ill., November 5, 1973.

Protest Review Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 12, 1973.

The following are decisions made by the United States Customs Service on protests filed under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and with respect to which further review was requested and granted under sections 174.23 and 174.24, Customs Regulations.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

November 26, 1973

PRD 73-26

District Director of Customs
Chicago, Illinois 60607

DEAR SIR:

Re: Decision on Application for Further Review of Protest No. 39012001280

The protest which is the subject of this decision was against your classification of certain matting in the liquidation on November 26, 1971, of entry No. 149597, dated March 24, 1970, and filed at the port of Chicago.

The matting was imported in rolls of two pieces, each measuring 6 feet by 30 feet. It consists of tufts of polypropylene vinyl chloride fibers attached to a tightly-woven base or backing of man-made fibers. The tufts form a tough, dense, stiff pile approximately 5/8-inch thick. According to a Customs laboratory analysis, the pile was inserted in the backing during the weaving process.

After importation, the matting is cut into small rectangles which are laminated to rubber bases. The final product provides a patch of green turf-like surface from which golf balls can be hit at a driving range.

In accordance with the classification opinion in our letter dated February 3, 1971, addressed to the protestant, the imported merchandise was classified under the provision in item 389.50, Tariff Schedules of the United States (TSUS), for non-ornamented textile articles of man-made fibers, of pile or tufted construction, not specially provided for elsewhere, and dutiable at the most-favored-nations (MFN) rate of 15 cents per pound plus 25 percent ad valorem. The protestant contends that on the basis of dedication to use exclusively as parts of golf mats, the merchandise should have been classified under the provision for parts of golf equipment, in item 734.77, TSUS, and dutiable at the 1970 MFN rate of 10 percent ad valorem.

In support of the protestant's position, T.D. 69–238(16) has been cited. In that decision, similar matting imported in a precut condition was classified as golf equipment. Also cited was *American Feldmuehle Corp.* v. *United States*, 64 Cust. Ct. 462, C.D. 4021 (1970). That case stands for the proposition that parts of an article, even though unfinished, are classifiable in accordance with the ultimate chief use to which they are dedicated.

However, the classification principles relating to parts and dedication to use are applicable to importations of articles, but are not generally applicable to importations of materials from which articles are made. See *Sandvik Steel, Inc.* v. *United States*, 66 Cust. Ct. 12, C.D. 4161 (1971), and precedents cited therein. Therefore, the rules of interpretation in General Headnote 10(h) and (ij), TSUS, do not govern the relative specificity of provisions for materials when in competition with provisions for articles or parts of articles.

In its condition as imported, the matting constitutes textiles in the piece, and, as such, must be regarded as material, rather than as articles. An exception would be warranted if the matting were partially cut or marked to facilitate subdividing into rectangles of dimensions clearly pre-determined before importation. But there is no evidence this is the case in this instance.

In view of the foregoing, the correctness of the protestant's claimed classification has not been demonstrated. Further, on reconsideration of this matter, we now find that the correct classification for the merchandise is the provision in item 346.60, TSUS, for pile fabrics in the piece, of man-made fibers, in which the pile was inserted or knotted during weaving. The MFN rate of duty required under this provision is 15 cents per pound plus 25 percent ad valorem.

Since the rate of duty under item 346.60 is the same as the rate assessed, you are directed to deny the protest in full. In future cases,

our previous decision of February 3, 1971, will no longer be followed.

Sincerely yours,

SALVATORE E. CARAMAGNO,
Director
Classification and Value
Division

November 26, 1973

PRD 73-27

District Director of Customs
San Francisco, California 94126

DEAR SIR:

Re: Decision on Application for Further Review of Protest No. 28091003425

This protest was filed against your decision in the liquidation of the following entries:

122230	133279	152483
133763	143155	154257
134044	144150	166506
135584	146114	112715
107566	152291	117194
136906	156757	121001
110368	159831	129924
118714	143299	133570
119697	143300	

The protest involves the question of whether certain tropical fruit salad imported from the Philippine Islands should be appraised on the basis of foreign value or on the basis of United States value. It is agreed that there is no export value because the merchandise was not freely offered for exportation to the United States. The exporter-producer of the tropical fruit salad is a wholly-owned subsidiary of the importer. Tropical fruit salad is on the "final list," Treasury Decision 54521, and, accordingly, is to be appraised under the provisions of section 402a of the Tariff Act of 1930, as amended.

At the time of exportation of the tropical fruit salad in question, the exporter was selling a tropical fruit salad in the Philippines which contained similar ingredients to the fruit salad exported to the United States, except that the imported fruit salad contained some ingredients which were not included in the fruit salad sold in the Philippines. The importer contends that the fruit salad sold in the Philippines was

similar to the fruit salad exported to the United States, and that the price at which the Philippine fruit salad was sold represented foreign value, and should be used as the basis of appraisement of the merchandise.

In May of 1972, the importer was asked to furnish detailed information as to the ingredients which made up each of the fruit salads in question. At that time he agreed to furnish the information. However, it was never received by Customs.

The importer freely offered the fruit salad at a price list price in the United States to all who would purchase at wholesale. It was determined by the appraising officer that the price list price for sale in the United States less certain specified deductions made pursuant to section 402a(e), Tariff Act of 1930, as amended, represented United States value, and was the proper basis of appraisement.

In the absence of evidence to establish the specific ingredients in the fruit salad sold in the Philippines and the fruit salad sold in the United States, it is impossible to determine whether the two products were, in fact, similar within the meaning of the tariff act. Accordingly, the evidence does not support a conclusion that foreign value existed.

As neither foreign value nor export value existed, and as a United States value has been established, we concur with appraisement of the merchandise on the basis of United States value. Accordingly, you are directed to deny the protest in full.

Your file is returned.

Sincerely yours,

SALVATORE E. CARAMAGNO,
Director
Classification and Value
Division

November 26, 1973

PRD 73-28

District Director of Customs
Seattle, Washington 98104

DEAR SIR:

Re: Decision on Application for Further Review of Protest No. 30022000008

Reference is made to the above-captioned protest and the application for further review attached thereto filed by B. A. McKenzie & Co., Inc., on behalf of Day's Sportswear, Inc., at the port of Tacoma, on February 16, 1972, covering entry Nos. 100027, 100101, 101507,

101595, 101727, 102012, 102081, 102162, 102401, and 102440, made between February 1, 1971, to July 19, 1971, inclusive.

The protest concerns fabrics classified by Customs officers under the provision for wool fabric in item 336.60, Tariff Schedules of the United States (TSUS), and claimed to be classifiable under the provision for fabrics of man-made fibers in item 338.15, TSUS. The fabrics involved were made from a combination of wool and man-made fibers and were in chief value of man-made fibers even though they were over 50 percent by weight of wool.

Headnote 7, Schedule 3, TSUS, enacted as part of Public Law 90–638, approved October 24, 1968, provides that with respect to fabrics provided for in Parts 3 and 4 of Schedule 3, TSUS, the provisions for fabrics in chief value of wool shall also apply to fabrics in chief weight of wool, whether or not they are in chief value of wool. Accordingly, fabrics in chief value of man-made fibers which contain over 50 percent by weight of wool are, pursuant to Headnote 7, classifiable as fabrics of wool.

The protest alleges that the higher rates of duty provided for in Public Law 90–638 were illegally imposed for the following reasons:

(1) Customs officials at the ports of Tacoma, Seattle, and Seattle-Tacoma Airport consistently classified the same or similar merchandise as that involved in this protest in items 338.10 and 338.15, TSUS, from the time of enactment of Public Law 90–638 until the middle of 1971. As a result, the classification of this merchandise in item 336.60, TSUS, constitutes a change in a uniform and established practice of classification for which the required notice was not given.

(2) The title of Public Law 90–638 makes no reference to wool and, therefore, its publication in the Federal Register was not a proper notification of a change in practice. Further, the insufficiency of notice is demonstrated by the fact that Customs officers in Seattle and Takoma, Washington, were unaware of the enactment of the public law.

(3) Item 336.60, TSUS, applies only to merchandise wholly or in chief value of wool and since the fabric in question was in chief value of man-made fibers, it is not classifiable in that provision.

We have investigated and determined that although Customs officials in Seattle and Tacoma were not classifying merchandise in accordance with the provisions of Headnote 7, the same or similar merchandise was being properly classified elsewhere. Accordingly, no uniform and established practice existed to classify fabrics in chief weight, but not in chief value, of wool according to the component of chief value. In this regard, the case of *Tuscany Fabrics, Inc.* v. *United States*, C.A.D. 1043 (1972), involving the application of Public Law

90–638 and Headnote 7, Schedule 3, TSUS, to woven fabrics in chief weight of wool, but in chief value of other fibers, is indicative that merchandise similar to that imported by Day's Sportswear was being properly classified in accordance with Headnote 7.

Section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), provides that no *administrative ruling* shall result in higher duties being assessed against merchandise for which a uniform and established practice is effective until the expiration of 30 days after publication in the weekly Treasury Decisions of notice of such ruling. An act of Congress is not an administrative ruling and, therefore, no notice was required. However, Public Law 90–638 was published as a matter of course in the weekly Customs Bulletin as Treasury Decision 68–277, dated November 6, 1968, to inform interested parties of the change in the law. The title of that Treasury decision is "Nonmalleable iron castings and fabrics in chief weight of wool—Revision of the Tariff Schedules of the United States."

Since Congress defined the term "of" for tariff purposes in General Headnote 9(f)(i), TSUS, it has the power to enact exceptions to that definition. Such an exception was enacted in Public Law 90–638, which created Headnote 7. The claim that this legislation is invalid because it was enacted as part of an unrelated bill was considered by the court in the *Tuscany Fabrics* case and specifically rejected.

On the basis of the above, we are of the opinion that the merchandise in question is classifiable under the provision for other woven fabrics of wool, valued over $2 per pound, in item 336.60, TSUS, and you are hereby directed to deny the protest in full.

Sincerely yours,

SALVATORE E. CARAMAGNO,
Director
Classification and Value
Division

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1111)

THE UNITED STATES v. L. BATLIN & SON, INC. No. 5521 (— F. 2d —)

1. CLASSIFICATION OF IMPORTS—ILLUMINATED BIRD CAGES

Customs Court decision granting importer's motion for summary judgment upon his classification protest. The merchandise, consisting of half bird cages with flowers and lights therein, was classified under item 653.40, TSUS. The importer had claimed that classification was proper under item 688.40, TSUS as electrical articles and electrical parts of articles, N.S.P.F. *Affirmed.*

2. ID.—STARE DECISIS

The court held the merchandise and legal issues at bar to be the same as those of *Ross* (58 CCPA 1), in consequence of which, that decision was *stare decisis* of the instant controversy. Our review of the record convinces us of the correctness of this holding.

3. ID.

Clear and convincing error in our prior decision has not been demonstrated as would preclude the application of the principle of *stare decisis.*

4. EVIDENCE—BURDEN OF PROOF—PRESUMPTION OF CORRECTNESS

Appellee's dual burden of proof was to produce substantial evidence tending to prove not only that the original classification was incorrect, but also that some specific alternative classification was proper.

United States Court of Customs and Patent Appeals, December 6, 1973

Appeal from United States Court of Customs Court, C.D. 4365

[Affirmed.]

Harlington Wood, Jr., Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Joseph I. Liebman* for the United States.

Earl R. Lidstrom, Irving Levine (Barnes, Richardson & Colburn), attorneys of record, for appellee.

[Oral argument October 1, 1973 by Mr. Liebman and Mr. Lidstrom]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE & MILLER, *Associate Judges*.

BALDWIN, Judge.

[1] This appeal is from the decision and judgment of the United States Customs Court [1] granting the importer's motion for summary judgment upon his classification protest.

The merchandise consists of half bird cages with flowers and lights therein, which were classified under item 653.40 of the Tariff Schedules of the United States (TSUS) as "[i]lluminating articles * * *: Other" and assessed at 19 per centum ad valorem. The importer had claimed that classification was proper under item 688.40, TSUS as "[e]lectrical articles and electrical parts of articles, not specially provided for" which are dutiable at 11.5 per centum ad valorem.

The issue before us is whether the Customs Court, in granting the importer's motion for summary judgment, was correct in holding that *Ross Products, Inc.* v. *United States*, 58 CCPA 1, C.A.D. 994 (1970), on the admitted facts before the court, was *stare decisis* of the instant controversy.

In support of its motion for summary judgment, the appellee relied upon certain admissions in the pleadings. In particular, the appellant had admitted that the imported merchandise was not an illuminating article, as that term is used in item 653.40, TSUS. It was further admitted that the merchandise consisted of bird cages with flowers and lights, which are decorative, which provide illumination from an electrical source sufficient only to illuminate said cages, and which are wired so that they may be connected to an electrical power source. These admissions were made by appellant in response to appelee's contention that the merchandise was the same in all material respects as the merchandise at bar in *Ross*,[2] wherein the merchandise was held to be properly classified under item 688.40, TSUS.

In its determination of whether the appellee had established the absence of a genuine issue of any material fact to be tried by the court, the Customs Court reviewed this court's decision in *Ross* and considered the admissions in the pleadings [2]. The court held the merchandise and legal issues at bar to be the same as those of *Ross*, in consequence of which, that decision was *stare decisis* of the instant controversy. Our review of the record before us convinces us of the correctness of this holding. Furthermore, [3] clear and convincing error in our prior decision has not been demonstrated such as would

[1] *L. Batlin & Son, Inc.* v. *United States*, 69 Cust. Ct. C.D. 4365 (1972).

[2] Although these facts were admitted, the appellant denied that the merchandise was otherwise the same in all material respects as the merchandise in *Ross*, insofar as the issues of chief use and component material of chief value were not litigated in that case.

preclude the application of the principle of *stare decisis*. *United States* v. *Dodge & Olcott, Inc.*, 47 CCPA 100, C.A.D. 737 (1960); *R. J. Saunders & Co., Inc.* v. *United States*, 54 CCPA 29, C.A.D. 898 (1966).

We do not find persuasive appellant's numerous arguments drawn to appellee's failure to meet his burden of proof. It should suffice to merely point out that the [4] appellee's dual burden of proof was to produce substantial evidence tending to prove not only that the original classification was incorrect, but also that some specific alternative classification was proper. *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004 (1970). The appellant admitted that the original classification was incorrect and thus the first part of appellee's burden was satisfied. By pleading that the merchandise was the same in all material respects as the merchandise in *Ross*, which in substance was admitted by the appellant, the second portion of appellee's burden was satisfied. The burden of going forward thereupon shifted to the appellant to properly plead and show either the applicability of an alternative classification, such as one of the unspecified household article provisions suggested by the appellant, or the inapplicability of appellee's asserted alternative classification. On the record before us, we agree with the finding of the Customs Court that the appellant failed to discharge that burden.

With regard to appellant's contention that the Customs Court abused its discretion in denying its request for a continuance in order to permit additional discovery, we fully agree with the analysis of the issue in the opinion below and accordingly find no abuse of discretion.

For the foregoing reasons, the judgment of the Customs Court is *affirmed*.

526-327—73——4

Decisions of the United States Customs Court

Protest Decisions

(C.D. 4486)

SENECA GRAPE JUICE CORP. *v.* UNITED STATES

Memorandum to Accompany Order

CONCENTRATED FRUIT JUICE—BRIX VALUE

Concentrated lemon juice imported from Italy and entered on December 31, 1963 was classified under item 165.35 of the tariff schedules at 35 cents per gallon of reconstituted juice. As defined in headnote 3(b) of schedule 1, part 12, subpart A of the schedules, reconstituted juice is the product obtained by mixing the imported

concentrated juice with water in a proportion equal to the Brix value (essentially concerned with the refractometric sucrose value of the juice) of like natural unconcentrated juice.

The merchandise at bar was liquidated on August 16, 1967 on the basis of a Brix value of 8.9 which had been established on March 31, 1964 pursuant to regulation adopted by the Bureau of Customs.

Plaintiff contends that a Brix value of 9.4 (which would mean a decrease in concentration, and, therefore, a decrease in duties) had previously been established and should have been applied since the entry was made prior to March 31, 1964. Plaintiff also claimed the regulation establishing the March 31, 1964 value was illegal as not in conformity with the Administrative Procedure Act, and was applied retroactively to the juice at bar.

On cross-motions for summary judgment, the court denied plaintiff's motion and granted defendant's motion. The record established that the Bureau of Customs, in October 1963, withheld all liquidations of entries covering juices after the effective date of the tariff schedules (August 31, 1963) pending promulgation of regulations establishing the Brix values to be used determining the dutiable quantity of fruit juices. The record also showed that the Bureau proposed to prescribe, pursuant to notice published in the Federal Register at about the same time, Brix values in accordance with headnote 3(b) of schedule 1, part 12, subpart A.

An examination of the pertinent tariff provisions indicates that whereas several factors were used by the Bureau prior to the tariff schedules, only one of which involved Brix values, the schedules, applicable to entries after August 31, 1963, required the application of a different standard, in determining the dutiable quantity of concentrated fruit juices, which was based on a Brix value alone. From the evidence of record, no intent can be assumed for retention under the new tariff schedules of a standard applied under the old tariff act and expressly nullified. See *Ciba Co.* v. *United States*, 23 CCPA 355, T.D. 48210 (1936). When the revised tariff schedules went into effect, the former practice became a nullity in its entirety. See *United States* v. *McGraw Wool Co.*, 19 CCPA 205, T.D. 45296 (1931).

The rule establishing the new Brix value was validly promulgated and properly applied to the merchandise at bar. It was not unreasonable for the Bureau to withhold liquidations after the schedules went into effect until new Brix values were determined as required thereunder. See *Pacific Creosoting Co.* v. *United States*, 23 Treas. Dec. 63, T.D. 32746, 196 F. 35 (9th Cir. 1912), and *Naumes Forwarding Service* v. *United States*, 42 CCPA 110, C.A.D. 581 (1955). Although the Brix value established in March 1964 was applied to an entry made earlier, a change of an administrative standard may be applied retroactively unless it works upon the party affected a hardship out of proportion to the public ends to be accomplished. See *National Labor Relations Board* v. *E & B Brewing Company*, 276 F.2d 594 (6th Cir. 1960), *cert. denied*, 366 U.S. 908, 81 S.Ct. 1083 (1961).

STATUTORY CONSTRUCTION—PRESUMPTION OF REGULARITY

In construing a statutory enactment, in an area clearly within the province of the legislature, it is the function of the judiciary to give effect to the legislative will. The general presumption of regularity attaching to all administrative action applies also to official actions taken by the customs officers. See *Reed* v. *Franke*, 297 F.2d 17 (4th Cir. 1961); *Sanji Kobata et al.* v. *United States*, 66 Cust. Ct. 341, C.D. 4213, 326 F. Supp. 1397 (1971).

Court No. 71/99

Port of New York

[Motion for summary judgment denied; cross-motion for summary judgment granted.]

(Dated November 29, 1973)

Serko & Sklaroff (*Murray Sklaroff* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Steven P. Florsheim*, trial attorney), for the defendant.

RE, Judge: In this action, which comes before the court on cross-motions for summary judgment, the legal question presented pertains to the proper dutiable quantity of concentrated lemon juice exported from Italy. The merchandise, entered at the port of New York on December 31, 1963, was classified under item 165.35 of the Tariff Schedules of the United States (TSUS) at the rate of 35 cents per gallon of reconstituted juice.

The pertinent classification provision reads as follows:

	"Fruit juices, including mixed fruit juices, concentrated or not concentrated, whether or not sweetened:	
	Not mixed and not containing over 1.0 percent of ethyl alcohol by volume:	
	* * * * * * *	
	Citrus fruit:	
* * *	Lime ----------	* * *
	Other:	
* * *	Not concentrated-------	* * *
165.35	Concentrated ---------	35¢ per gal." [1]

The term "reconstituted juice" is defined in headnote 3(b) of schedule 1, part 12, subpart A as "the product which can be obtained by mixing the imported concentrate with water in such proportion that the product will have a Brix value equal to that found by the Secre-

[1] The term "gallon" under the rates of duty column applicable to fruit juices is defined in headnote 3(a) of schedule 1, part 12, subpart A as "gallon of natural unconcentrated juice or gallon of reconstituted juice".

tary of the Treasury from time to time to be the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States". The term "Brix value" is defined in headnote 3(c) of schedule 1, part 12, subpart A, as the "refractometric sucrose value of the juice, adjusted to compensate for the effect of any added sweetening materials, and thereafter corrected for acid." The method to be employed in determining the number of gallons of reconstituted juice is set out in headnote 4 of schedule 1, part 12, subpart A.

On March 23, 1964, the Assistant Secretary of the Treasury, through the Commissioner of Customs, determined that the average Brix value of natural unconcentrated lemon juice was 8.9 for the purposes of headnote 3 of schedule 1, part 12, subpart A. This ruling was published in the Federal Register on March 31, 1964 (29 F.R. 4150, 99 Treas. Dec. 185, T.D. 56135), and made effective as of that date. The Brix value of 8.9 was subsequently utilized to determine the dutiable quantity of the concentrated lemon juice herein upon liquidation of the entry on August 16, 1967.

Plaintiff does not contest the classification, rate of duty assessed, or method employed in calculating the dutiable quantity as provided in the tariff schedules headnotes. It does contend, however, that the application of a value of 8.9 was erroneous and improper, and that a Brix value of 9.4 should have been used instead. An increase in the Brix value is accompanied by a decrease in concentration and, consequently, a decrease in duties, and *vice versa*.

Accordingly, plaintiff has moved for summary judgment directing the customs officials at the port of New York to reliquidate the subject entry, utilizing a Brix value of 9.4 to determine the dutiable of the imported juice.

Plaintiff claims that a Brix value of 9.4 "had been established and uniformly applied by the Bureau of Customs" to determine the dutiable quantity of concentrated lemon juice from December 26, 1950 until immediately prior to August 31, 1963, the effective date of TSUS. By reason of such established and uniform practice the plaintiff contends that the Brix value of 9.4 should have been applied to importations of juice entered after TSUS and prior to the establishment of the new Brix value of 8.9 on March 31, 1964. Therefore, plaintiff concludes that the utilization of a value of 8.9 in liquidating the entry herein was a "retroactive application" which, under the circumstances, was improper and illegal.

Plaintiff also urges that the rule making provisions of the Administrative Procedure Act (APA) in effect at that time (5 U.S.C. § 1003) were violated in that the notice of proposed rule making published in the Federal Register on November 2, 1963, proposed a Brix value of

9.4 for lemon juice whereas the regulation adopted in March 1964 established a value of 8.9.

Defendant, on its cross-motion, denies the existence of a uniform practice with respect to use of a Brix value of 9.4 in liquidating entries of concentrated lemon juice made during the 12½-year period preceding August 31, 1963. It contends that no finding of such an established and uniform practice had ever been made by the Secretary of the Treasury and that no regulation had ever been promulgated adopting that value.

The government also denies plaintiff's assertions as to the illegality of the regulation establishing a Brix value of 8.9 for lemon juice, asserting that it was adopted in conformity with the requirements of the APA and was properly applied in liquidating the entry at bar.

There is no dispute as to the statutes, regulations and other pertinent factual data relied upon by the parties and cited in their briefs or annexed as exhibits to their respective motions. A summary of this material follows in order to place the issues in proper perspective.

Prior to the enactment of TSUS, imports of concentrated lemon juice were assessed for duty under paragraph 806(b) of the Tariff Act of 1930, as modified by the General Agreement on Tariffs and Trade, T.D. 51802, which provided as follows:

"806(b)	Concentrated juice of citrus fruits, fit for beverage purposes, and syrups containing any of the foregoing, all the foregoing, whether in liquid, powdered, or solid form:	
	* * * * * * *	
	Lemon, orange, and other (* * *)----------	35¢ per gal. on the quantity of unconcentrated natural fruit juice contained therein as shown by chemical analysis"

The moving papers do not indicate the exact nature of the "chemical analysis" used prior to December 26, 1950 to determine the dutiable quantity of juice. However, a letter of that date from the Acting Commissioner of Customs to the collector at the port of Chicago, sent in response to his request for instructions for determining the proportion of the concentrated lemon juice to unconcentrated juice, directed him to use a method which was based on "the best current and authentic

data on the composition of normal lemon juice now available * * *". The letter then set out the values of the various constituents present in natural lemon juice, including "total soluble solids", fat or fat soluble materials, sugar, acid, minerals, the approximate pH, and Brix (as a measurement of total soluble solids by weight). The last named was given a value of 9.4.

The U.S. Customs Laboratory Method No. 806.1–54 (Tentative), dated December 2, 1954, which outlined the Customs Laboratory procedure for analyzing fruit juices and fruit syrups in order to obtain the percentages of alcohol, citric acid, soluble solids (Brix), specific gravity and ash present in the liquids, also utilized a Brix value of 9.4. It stated in a footnote that the Brix value was taken from the aforementioned Bureau letter of December 26, 1950.

In a letter dated January 30, 1968, which opposed passage of a private bill for the relief of plaintiff against the payment of additional duties on concentrated lemon juice based upon a Brix value of 8.9 instead of 9.4, the General Counsel of the Treasury advised the Chairman of the House Judiciary Committee that prior to August 31, 1963, a Brix value of 9.4, and acidity and ash content, were the factors employed in determining the dutiable quantity of such juice. The letter stated, in pertinent part:

> "On March 31, 1964, the Secretary of the Treasury, under the authority of Schedule 1, Part 12A, Headnotes 3 and 4 of the Tariff Schedules of the United States, determined that the average 'Brix value' of unconcentrated natural lemon juice in the trade and commerce of the United States was 8.9. As a matter of law this finding was applicable to all entries made on and after August 31, 1963. A Brix value of 9.4 *was one factor used to determine the dutiable quantity of lemon juice before that date. Acidity and ash content were the other factors used to determine dutiable quantity.* In substance, the Secretary's action in determining that the 'Brix value' is 8.9 provides a greater amount of duty on concentrated lemon juice than did the earlier 9.4 'Brix value.' All importations of concentrated lemon juice imported into the United States since August 31, 1963, have been dutiable upon the basis of the 8.9 'Brix value' determined by the Secretary." [Emphasis added.]

Two months after TSUS went into effect, the Commissioner of Customs issued a notice on October 22, 1963, directing the collectors of customs to withhold the liquidation of any entry covering fruit juice classifiable under schedule 1, part 12, subpart A of the tariff schedules which was entered on or after August 31, 1963, "pending promulgation of regulations establishing Brix values to be used in determining the number of gallons [of fruit juice] on which to assess the duty".

Under date of October 24, 1963, the Assistant Secretary of the Treasury, through the Commissioner of Customs, published in the

Federal Register of November 2, 1963, a "notice of proposed rule making" pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. § 1003), which stated, in pertinent part:

> "Notice is given pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 1003) that under the authority of section 624 of the Tariff Act of 1930 (19 U.S.C. 1624), and General Headnote 11 and headnote 3(b), subpart A, part 12, schedule 1, of the Tariff Schedules of the United States, it is proposed to amend part 13 of the Customs Regulations to prescribe the average Brix values determined by the Secretary in accordance with said headnote 3(b). The amendments *in tentative form* are set forth below. [Emphasis added.]
>
> * * * * * * *
>
> "§ 13.19 Brix values of unconcentrated natural fruit juices.
>
> "The following values have been determined to be the average brix values of unconcentrated natural fruit juices in the trade and commerce of the United States, for the purposes of the provisions of headnote 3, part 12A, schedule 1 of the Tariff Schedules of the United States, and will be used in determining the dutiable quantity of imports of concentrated fruit juices using the procedure set forth in headnote 4 of said part 12A:

Kind of fruit juice	Average brix value (degrees)
* * * * * * *	
Lemon	9.4
* * * * * * *	

> "Prior to the issuance of the proposed amendment, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Bureau of Customs, Washington, D.C., 20224, and received not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held."

Subsequently, the new rule of which plaintiff complains, prescribing average Brix values of natural unconcentrated fruit juices in the trade and commerce of the United States, including a value of 8.9 for lemon juice, was adopted by the Assistant Secretary of the Treasury through the Commissioner of Customs on March 23, 1964. As already noted, it was published in the Federal Register eight days later. The published notice also stated—

"After consideration of all relevant data submitted in response to the notice, * * * revised values have been adopted for lemon and orange juices.

* * * * * * *

"*Effective date.* Inasmuch as promulgation of the Brix values set forth in this amendment is required by statute (Sec. 101, 76 Stat. 72; Sch. 1, pt. 12A, headnote 3, Tariff Schedules of the United States), and no liquidations of entries of the involved commodities can be made until the foregoing amendments are made effective, good cause is found for making the amendments effective in less than 30 days after publication in the FEDERAL REGISTER, and the foregoing amendments shall become effective upon publication in the FEDERAL REGISTER."

It is against this setting that plaintiff urges that a Brix value of 9.4 should have been applied in liquidating the instant entry. However, plaintiff has expressly refrained from claiming that there had been a "finding" of an "established and uniform practice" by the Secretary of the Treasury pursuant to section 315(d) of the Tariff Act of 1930,[2] as modified, or that the regulation of March 1964 which, in effect, resulted in the imposition of higher duties on concentrated lemon and orange juices, required 30 days' notice under that section. In fact, plaintiff concedes that "section 315(d) is not germane to the issue in any way", asserting that its "only claim * * * for the determination of a Brix value of 9.4 is that *such determination was in effect immediately prior to TSUS and it had been in effect for a long time.*" [Emphasis in original.]

Plaintiff maintains that the existence of such practice brings into play the "well settled principle in Customs law" that an administrative practice based on regulations promulgated by the Secretary of the Treasury, pursuant to the general authority conferred upon him by section 624 of the Tariff Act of 1930 (19 U.S.C. § 1624),[3] continues in effect and must be utilized under the new tariff schedules until the

[2] Section 315(d) (19 U.S.C. § 1315(d)) provides:

"(d) No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the weekly Treasury Decisions of notice of such ruling; but this provision shall not apply with respect to the imposition of anti-dumping duties."

For construction of the notice-of-change requirement under section 315(d), see *Asiatic Petroleum Corp.* v. *United States*, 59 CCPA 20, C.A.D. 1029 (1971); *Washington Handle Co.* v. *United States*, 34 CCPA 80, C.A.D. 346 (1946); *Martin Brokerage Company* v. *United States*, 36 Cust. Ct. 35, C.D. 1750 (1956). See also Customs Regulation section 16.10(a) (19 C.F.R. 16.10(a)) requiring 90 days' notice where there is a change in an established and uniform practice at the various ports resulting in a higher rate of duty.

[3] Section 624 provides that—

"In addition to the specific powers conferred by this chapter the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this chapter."

Secretary of the Treasury establishes a new practice. Thus, plaintiff concludes, and cites *Ciba Co.* v. *United States*, 23 CCPA 355, T.D. 48210 (1936), as authority for the proposition that the Brix value of 9.4 established under the earlier tariff classification schedules carried over into TSUS with respect to all entries of concentrated lemon juice made prior to March 31, 1964, when the ruling as to a Brix value of 8.9 became effective.

Plaintiff's reliance upon *Ciba*[4] is misplaced. The *Ciba* case is not only inapposite to the theory expounded by plaintiff, but is based upon *United States* v. *McGraw Wool Co.*, 19 CCPA 205, T.D. 45296 (1931), which stands for and, indeed, compels a conclusion contrary to that urged in plaintiff's motion.

The court held, in *Ciba*, that certain standards of strength established by the Secretary of the Treasury pursuant to the Tariff Act of 1922 and used for determining the dutiable weight of coal tar dyes under that act, were, in the absence of the promulgation of new dye standards authorized by the Tariff Act of 1930 and, under the particular "circumstances" enumerated by the court, applicable to importations of coal tar dyes under the 1930 Act.

The circumstances cited by the court included a notice sent to all collectors of customs by the Secretary of the Treasury advising them that when the new act became effective, the Treasury Department would issue instructions "*continuing existing regulations wherever applicable* and would prescribe such further regulations as were required." Also, the day before the 1930 Act went into effect the collectors were advised that "[e]xisting regulations *including dye standards* * * * [are] *extended so far as applicable* pending further instructions." [Emphasis added.] 23 CCPA at 358.

In finding that the foregoing instructions warranted the application by the collector of dye standards promulgated under the 1922 Act to importations under the Tariff Act of 1930, the court quoted the following from the *McGraw Wool* case:[5]

> "It is true that a regulation of the Secretary of the Treasury, duly promulgated in pursuance of the authority given to the Secretary in a tariff act by Congress, will continue in operative force and effect, in the absence of any order of the Secretary repealing or modifying the same, or, in the absence of a new regulation in lieu thereof, after a new tariff act containing a like

[4] Assiduous research fails to disclose any reference to *Ciba* in later cases for the so-called "well settled principle" asserted by plaintiff or, for that matter, any other proposition.

[5] In *McGraw Wool*, the Secretary of the Treasury had established a new method of ascertaining the dutiable weight of clean wool pursuant to the directive of the Tariff Act of 1930 authorizing him to establish regulations for carrying out the provisions of the wool schedule. This regulation, challenged by plaintiff, was upheld by the court as abrogating the regulation promulgated under the earlier act and as being within the Secretary's discretion.

power to make regulations has been enacted and has become effective. This, however, is not because of any continuing vitality of the regulation itself, but is because it is assumed that the Secretary, *by the absence of action on his part*, has assented to and repromulgated the former regulation for the time being. *The moment he acts, however, under the new tariff act such new action constitutes his regulation and the former one becomes, by that act, abrogated.* [Emphasis added.]

"Let us assume that the Secretary duly promulgated a regulation concerning the dutiable weight of wool, by virtue of his authority under the Tariff Act of 1922. Assume, further, that the Tariff Act of 1930 contained no provision authorizing the Secretary to make any such regulation. It must be conceded in such case that when the Tariff Act of 1930 became effective, *eo instanti* the said former regulation became of no force and effect. The authority being withheld, and the former act being repealed, no further authority existed, and the regulation was a nullity." 19 CCPA at 209–10.

It is patent that the circumstances prevailing in the case at bar are just the opposite of those in *Ciba*. Even assuming the existence of the established practice claimed by plaintiff, i.e., use of a Brix value of 9.4 to determine the dutiable quantity of concentrated lemon juice, it is clearly evident that there was neither an intent to retain that standard or practice under the new schedules, as in *Ciba*, nor the administrative inaction described in *McGraw Wool* from which it could be "assumed" that the Secretary of the Treasury had "assented to and repromulgated the former" practice for the time being. Indeed, the instructions of October 22, 1963, issued less than two months after TSUS went into effect, which suspended liquidations of all entries covering fruit juices classifiable under schedule 1, part 12, subpart A of TSUS until new regulations establishing Brix values were issued, unmistakably set forth the intent of the Bureau to abrogate all prior practices with respect to Brix values and to establish new ones. Accordingly, the court finds no warrant for retention under the new revised tariff schedules of a standard that had been expressly nullified.

Furthermore, the so-called practice allegedly followed under the 1930 Act is not the same as that now mandated under TSUS for determination of the dutiable quantity of concentrated fruit juice. Paragraph 806(b) assessed duty on the "quantity of unconcentrated natural fruit juice contained * * * [in such concentrated juice or syrup] as shown by chemical analysis", without establishing any standards for such analysis. All of the government documents relied upon by plaintiff and cited hereinabove, specifically, the Acting Commissioner's letter of December 26, 1950, the Customs Laboratory method dated December 2, 1954, and the General Counsel's letter of January 30, 1968, indicate that the Bureau of Customs used several factors, only one of which was concerned with Brix value, to determine the dutiable quan-

tity of lemon juice. It may also be noted that acidity and mineral ash content were equally important in making that determination.[6]

TSUS, however, applies a different standard, basing the dutiable quantity on the "reconstituted juice" obtained by—

> "* * * mixing the imported concentrate with water in such proportion that the product will have a Brix value equal to that found by the Secretary of the Treasury from time to time to be the average Brix value of like natural unconcentrated juice in the trade and commerce of the United States; * * *"

In view of the fact that the procedure required under TSUS differs markedly from that followed under paragraph 806(b), it is irrelevant to the liquidation of the entry at bar whether the preceding practice had been uniformly applied. When the revised tariff schedules (TSUS) went into effect, that former practice *eo instanti* became a nullity in its entirety. *United States* v. *McGraw Wool Co.*, 19 CCPA 205, T.D. 45296 (1931).

Plaintiff contends that, even if legally adopted, the Brix value of 8.9 was improperly applied "retroactively" to the subject entry. The court cannot agree that there was a "retroactive" application in the instant case. The merchandise herein was subject to assessment based on a Brix value of like natural unconcentrated juice found by the Secretary of the Treasury "from time to time." As none had been found, the entry could not be liquidated until such determination was made. Therefore, the instruction to withhold liquidations until the new Brix values were determined, as required by the statute, was entirely reasonable and appropriate.

Plaintiff's insistence that the validity of the use of the new Brix value of 8.9 depended upon its promulgation prior to the date of entry of the merchandise is unrealistic. This requirement would have imposed an insuperable burden upon the Secretary in view of the many complications and difficulties usually attending the administration of a new statute. Under the circumstances, the court does not find that there was an unreasonable delay in establishing new Brix values.

The suspension of liquidations pending receipt of advice or instructions is a well known practice of long standing. Indeed, it was followed over 60 years ago in *Pacific Creosoting Co.* v. *United States*, 23 Treas. Dec. 63, T.D. 32746, 196 F. 35 (9th Cir. 1912), where the collector suspended liquidation of the subject entries while awaiting advice from the Secretary of the Treasury. That practice was not disap-

[6] Athough plaintiff cites no regulations promulgating such practice, it will be conceded for the purposes of its motion that the procedure described in the letter of December 26, 1950, and the cited 1954 laboratory method for determining the dutiable quantity of concentrated lemon juice were uniformly followed until August 31, 1963.

proved by the circuit court therein, which stated, quoting from *Abner Doble Co.* v. *United States*, 119 F. 152, 153 (9th Cir. 1902), "The law does not prescribe the time when the collector shall liquidate the duties." See also *United States* v. *De Rivera*, 73 F. 679 (S.D.N.Y. 1896).

Indeed, in *Naumes Forwarding Service* v. *United States*, 42 CCPA 110, C.A.D. 581 (1955), a case upon which plaintiff relies to support its claim that a Brix value of 9.4 for lemon juice had been utilized from December 1950 until the inception of TSUS, this very practice, labeled as "illegal" and "retroactive" by plaintiff herein was followed and implicity approved by the court, although not raised as a separate issue. In the *Naumes* case, the collector at the port of Chicago had followed the procedures recommended in the aforecited Bureau letter of December 26, 1950 (including utilization of a Brix value of 9.4) in liquidating entries of concentrated lemon juice *entered prior thereto*, i.e., between February and July of 1950. This resulted in the assessment of duties higher than were imposed on shipments of such juice the previous year. The appellate court affirmed the trial court's holding overruling the protests on the ground that plaintiff had failed to show the existence of an established and uniform practice.

Another major consideration herein is the general presumption of regularity that attaches to all administrative action. In the absence of clear evidence to the contrary, the courts presume that public officers have properly discharged their duties and will not disturb the action taken. *United States* v. *Chemical Foundation*, 272 U.S. 1, 47 S. Ct. 1 (1926); *Reed* v. *Franke*, 297 F. 2d 17 (4th Cir. 1961); *Fraisier* v. *Finch*, 313 F. Supp. 160 (D.C. Ala. 1970), *aff'd*, *Frasier* v. *Richardson*, 434 F. 2d 597 (5th Cir. 1970). This presumption, of course, also attaches to the official actions taken by customs officers. *United States* v. *Getz Bros. & Co.*, 55 CCPA 90, C.A.D. 938 (1968); *Olavarria & Co., Inc.* v. *United States*, 47 CCPA 65, C.A.D. 729 (1960); *United States* v. *Henry W Peabody & Co.* v. *United States*, 40 CCPA 59, C.A.D. 498 (1952). Indeed, the presumption is now statutory. See *Sanji Kobata et al.* v. *United States*, 66 Cust. Ct. 341, 344, C.D. 4213, 326 F. Supp. 1397, 1399 (1971).

As indicated elsewhere, the courts have been loath to disturb the administrative acts and rulings of responsible officials who possess a special knowledge and competence in particular areas of government. *John V. Carr & Son, Inc.* v. *United States*, 69 Cust. Ct. 78, C.D. 4377, 347 F. Supp. 1930 (1972). See also *Udall* v. *Tallman*, 380 U.S. 1, 85 S. Ct. 792 (1965); *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111, 64 S. Ct. 851 (1944). Certainly the court is not convinced that plaintiff has met its burden of establishing that the of-

ficers charged with administering the Tariff Classification Act of 1962 have acted unreasonably.[7]

Even if the regulation of March 31, 1964 were considered as having a retroactive effect when applied to entries of an earlier date, that fact does not necessarily render it invalid. Mr. Justice Murphy stated, in *Securities and Exchange Commission* v. *Chenery Corporation*, 332 U.S. 194, 203, 67 S. Ct. 1575 (1947):

> "Every case of first impression has a retroactive effect, whether the new principle is announced by a court or by an administrative agency. But such retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles. If that mischief is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law. See *Addison* v. *Holly Hill Co.*, 332 U.S. 607, 620."

Therefore, a change of an administrative standard may be applied retroactively unless it will work upon the party affected by it a hardship that is out of proportion to the public ends to be accomplished. *National Labor Relations Board* v. *E & B Brewing Company*, 276 F. 2d 594 (6th Cir. 1960), *cert. denied*, 366 U.S. 908, 81 S. Ct. 1083 (1961); *Sun Oil Company* v. *Federal Power Commission*, 256 F. 2d 233 (5th Cir. 1958), *cert. denied*, 358 U.S. 872, 79 S. Ct. 111 (1958); *National Labor Relations Board* v. *Guy F. Atkinson Co.*, 195 F. 2d 141 (9th Cir. 1952).

In *Joseph* v. *Federal Communications Commission*, 404 F. 2d 207, 212 (D.C. Cir. 1968), the court observed that the power of an agency to change its standards prospectively "is not in derogation of its duty to change them retrospectively when that better furthers the overall public interest."

Accordingly, the court finds that the carrying out of the statutory requirements not only served the public interest, but far outweighed the financial disappointment suffered by plaintiff which expected to pay lower duties on the imported juice. Expectations, however, do not give rise to a vested interest especially if they pertain to the importation of merchandise. It is a fundamental principle under our Constitution that "no individual has a vested right to trade with

---

[7] With respect to the Commissioner's power to order suspension of liquidations, his acts are deemed to have been duly authorized by the Secretary of the Treasury who may, under section 2 of the 1950 Reorganization Plan No. 26 (15 F.R. 4935, 64 Stat. 1280)—

> "* * * from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of the Treasury of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan."

See also 19 U.S.C. § 2072(c) as amended by Act, September 3, 1954, c.1263, § 9, 69 Stat. 1228, 1229, which provides that—

> "The personnel of the Bureau of Customs shall perform such duties as the Secretary of the Treasury may prescribe."

foreign nations, which is so broad in character as to limit and restrict the power of Congress to determine what articles of merchandise may be imported into this country and the terms upon which a right to import may be exercised". *Buttfield* v. *Stranahan*, 192 U.S. 470, 493, 24 S. Ct. 349 (1904). Thus, an importer cannot complain of import regulations which are within constitutional limitations. *In Re The Orion Co.*, 22 CCPA 149, T.D. 47123, 71 F. 2d 458 (1934); *Dart Export Corp. et al.* v. *United States*, 43 CCPA 64, C.A.D. 610 (1956), *cert. denied*, 352 U.S. 824, 77 S. Ct. 33 (1956); *S. J. Charia & Co.* v. *United States*, 33 Cust. Ct. 107, C.D. 1642 (1954), *aff'd*, 43 CCPA 147, C.A.D. 622 (1956).

Citing its financial loss, plaintiff urges this court to give heed to equitable considerations, asserting that under the Customs Courts Act of 1970, and the rules promulgated pursuant thereto, "this Court may do equity where that is the remedy indicated." The argument is reminiscent of a plea for the invocation or reinstatement of the ancient English doctrine of construing a statute according to its equity. See 1 Blackstone, *Commentaries* 61 (1st ed. 1765); 1 Coke, *Institutes* 24b (15th ed. 1794); 2 Plowden 465 (1761). The doctrine served a beneficial purpose when the early acts of parliament were sketchy and couched in general terms. The generality of these early enactments, and a vagueness between the judicial and legislative functions, justified the creation by the courts of the doctrine of the equity of the statute. Legislation, however, has made great strides since the days of Blackstone and Plowden. In construing a statutory enactment, in an area clearly within the province of the legislature, it is the function of the judiciary to give effect to the legislative will.

Liberality of construction, designed to effectuate the legislative purpose, cannot be invoked to confer a power not granted. Plaintiff seems to assert that since plaintiff has been adversely affected, this court must fashion some appropriate remedy and afford relief. Plaintiff's contention, on this aspect of the case, calls to mind the words of Mr. Justice Frankfurter, who, in dissent, cautioned that one ought not "imply that the protection of legal interests is entrusted solely to the courts." Mr. Justice Frankfurter dissenting in *Columbia Broadcasting System, Inc.* v. *United States*, 316 U.S. 407, 446, 62 S.Ct. 1194 (1942).[8] More recently, as specifically applicable to cus-

[8] The views expressed here do not conflict with those of Mr. Justice Douglas where, in a concurring opinion in *Flast* v. *Cohen*, 392 U.S. 83, 111, 88 S.Ct 1942 (1968), he stated: "The judiciary is an indispensable part of the operation of our federal system. With the growing complexities of government it is often the one and only place where effective relief can be obtained. If the judiciary were to become a super-legislative group sitting in judgment on the affairs of people, the situation would be intolerable. But where wrongs to individuals are done by violation of specific guarantees, it is abdication for courts to close their doors."

toms law, see *Matsushita Electric Industrial Company, Ltd., et al.* v. *The United States Treasury Department et al.*, 67 Cust. Ct. 328, C.D. 4292 (1971), *aff'd*, 60 CCPA —, C.A.D. 1086 (1973).

The APA provisions governing rule making which were in effect during 1963–1964 (5 U.S.C. § 1003 (a) and (b)), required the notice of the proposed rule published in the Federal Register to include, among other matters, "either the terms or substance of the proposed rule or a decription of the subjects and issues involved." They also directed the agency to "afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner".

The notice here in question amply describes the subject and pertinent issues. Also, the fact that two of the proposed Brix values were revised did not invalidate the procedure followed. All interested parties had sufficient notice of what was under consideration, and were given an opportunity to present their views. Moreover, they were put on notice that the proposed values were only " *in tentative* form." Thus, the court finds no basis for plaintiff's statement that the notice "permitted only the assumption that the proposed Brix value of 9.4 would be continued".

Indeed, if such were the case, the statement in the notice that "consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs" would have been a sham and the entire proceeding would have constituted an abuse of the rule making process. There is no basis for ascribing any such intent either to the Commissioner, or to the Secretary of the Treasury.

In view of the foregoing, it is the decision of the court that the rule establishing a Brix value of 8.9 was validly promulgated and properly applied upon liquidation of the entry herein to determine the dutiable quantity of imported juice.

Plaintiff's motion for summary judgment is denied, and defendant's cross-motion for summary judgment is granted.

An order will issue accordingly.

(C.D. 4487)

ADOLCO TRADING CO.
ADOLCO TRADING CORP. } [1] *v.* UNITED STATES

Luggage—Shopping bags

Plastic bags in various sizes, the smaller bags being about 9 by 9 by 4 inches and the larger ones 13 by 14 by 4 inches, having wide openings, and large looped handles attached by rivets, with no closure on top, generally with flat bottoms, and gusseted sides, retailing from $0.35 to $1.49, resembling paper shopping bags in size, shape and general characterstics, bought, sold and commonly called shopping bags, used to carry purchases home from the store, and also for convenience in carrying other than purchased articles, held not classifiable as luggage or handbags under item 706.60, Tariff Schedules of the United States. They are properly dutiable under item 774.60 under the tariff schedules, as modified, as articles, not specially provided for, of plastics.

LUGGAGE—SHOPPING BAGS

Articles, such as those described above, commonly called shopping bags, are not luggage as that term is defined in schedule 7, part 1D, headnote 2(a). They are none of the articles named in the headnote and are not "like articles designed to contain clothing or other personal effects during travel" nor "like containers and cases designed to be carried with the person."

HANDBAGS—SHOPPING BAGS

They are not handbags as that term is defined in schedule 7, part 1D, headnote 2(b). They are none of the articles named nor are they "similar articles." As shopping bags, they are excepted by the definition itself.

BAGS—PLASTICS—TEXTILE MATERIALS

A net string bag with double strands joined together in such a way as to form a mesh bag is not classifiable under schedule 7, part 12, since it is in the form of a product made of textile materials. *R. H. Macy & Co., Inc.* v. *United States*, 57 CCPA 115, C.A.D. 988, 428 F. 2d 856 (1970); *United Merchants, Inc.* v. *United States*, 60 CCPA—, C.A.D. 1073, 468 F. 2d 208 (1972).

PARTIES—JURISDICTION

Where entry was made in the name of a nominal consignee, as importer of record for the account of Adolco Trading Co., and the evidence established that Adolco Trading Co. was the purchaser, importer and owner of the merchandise, the latter had standing to file a protest, over which this court has jurisdiction.

[1] "Adolco Trading Co." apparently refers to the company prior to its incorporation. The corporation is referred to in the papers as "Adolco Trading Corp.", "Adolco Trading, Inc." and "Adolco Trading Company, Inc."

Court Nos. 68/65804, etc.

Port of New York

[Judgment in part for plaintiffs.]

(Decided November 29, 1973)

Lane, Young & Fox (*Peter Jay Baskin* of counsel) for the plaintiffs.
Irving Jaffe, Acting Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

RAO, Judge: The merchandise involved in these cases, consolidated for trial, is described on the entry papers as "shopping bags." It was imported from Japan, Hong Kong, and Taiwan between March 1968 through July 1970 and was entered at the port of New York.

The merchandise was classified under item 706.60, Tariff Schedules of the United States, at 20 per centum ad valorem, as luggage of plastics. It is claimed to be dutiable under item 774.60, as modified by Presidential Proclamation No. 3822, T.D. 68–9, as articles of plastics, not specially provided for, at various rates depending upon the dates of entry. In all of the actions except Court Nos. 69/8845, 70/20678, and 70/65713 with respect to entry No. 235923, the answers raise the affirmative defense that, alternatively, if the merchandise is not luggage for tariff purposes, it is classifiable as handbags under item 706.60. Plaintiffs' replies deny this. No reply appears to have been filed in Court No. 69/5703.

At the trial defendant was granted leave to amend its pleadings with regard to Court No. 69/8845, to claim that the merchandise should have been classified under item 386.08, as articles of textile materials, not specially provided for, lace or net articles, whether or not ornamented.

The pertinent provisions of the tariff schedules, as modified, are as follows:

Schedule 7, part 1, subpart D

Subpart D headnotes:

* * * * * * *

2. For the purposes of the tariff schedules—

(a) the term "luggage" covers—

(i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel; and

	(ii) brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians', sample, etc.), and like containers and cases designed to be carried with the person, except handbags as defined herein;	
	(b) the term "handbags" covers pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls, but not including luggage or flat goods as defined herein or shopping bags;	
	* * * * * * *	
	Luggage and handbags, whether or not fitted with bottle, dining, drinking, manicure, sewing, traveling, or similar sets; and flat goods:	
	Of leather:	
	* * * * * * *	
	Of unspun fibrous vegetable materials:	
	* * * * * * *	
	Of textile materials * * *:	
	* * * * * * *	
* * *	Of reinforced or laminated plastics	* * *
	Of other materials:	
	Handbags:	
	* * * * * * *	
	Flat goods, of metal:	
	* * * * * * *	
706.60	Other	20% ad val.
	Schedule 7, part 12	
	Articles not specially provided for, of rubber or plastics:	
* * *	Of shellac or copal	* * *
* * *	Of natural rubber	* * *
* * *	Of casein	* * *
* * *	Of vulcanized fiber	* * *
774.60	Other	15%, or 13.5% or 11.5% ad val. depending on date of entry

Schedule 3, part 7, subpart B

	Articles not specially provided for, of textile materials:	
	Lace or net articles, whether or not ornamented, and other articles ornamented:	
	* * * * * * *	
386.08	Other	45% ad val.

At the trial plaintiffs abandoned Court Nos. 68/65804, 69/7629, 69/50143, 69/50144, and 70/20678, and Court No. 69/51817 as to Carton No. 366, Court No. 69/52229 as to Style No. A 618, Court No. 70/43187 as to Carton Nos. 49/109, Court No. 70/49107 as to Carton No. 1198, and Court No. 70/60821 as to Style No. 1095. To that extent, the consolidated action will be dismissed.

In view of the fact that entry No. 235923 in Court No. 70/65713 is not in the court files and is not available for inspection, defendant contends that plaintiffs' claim as to the merchandise covered thereby should be overruled for failure of proof. Plaintiffs request that the entry be severed from the action and a continuance granted during which time they would attempt to reconstruct the entry. This request will be granted and plaintiffs given six (6) months from the date of the order of severance to reconstruct the entry and take appropriate steps to dispose of the severed action.

The Government claims that entry No. 517254 in Court No. 70/43188 should be dismissed on the ground that that entry was made by Leonard Satz and the protest was filed by Adolco Trading Co. which was neither the importer of record nor the consignee.

The entry is in the name of Leonard Satz, as importer of record, for the account of Adolco Trading Co. Mr. Satz declared on the entry that

> * * * I am ☒ the nominal consignee and that the actual owner for customs purposes is as shown above * * *.

No owner's declaration was filed. The commercial and special customs invoices list Adolco Trading Co. as the purchaser. At the trial, Adolph Cohn testified that he had been the individual owner of Adolco Trading Co. prior to its incorporation three years ago and since then has been president of the incorporated firm. He said that his company was the importer of the merchandise covered by the invoices involved in this case.

Under section 514, Tariff Act of 1930, a protest may be filed by "the importer, consignee, or agent of the person paying such charge." I hold that the record establishes that Adolco Trading Co. was the owner and importer of the merchandise, and had standing to file a

protest as to entry No. 517254, over which this court has jurisdiction. *United States* v. *Hannevig*, 10 Ct. Cust. Appls. 124, T.D. 38384 (1920); *United States* v. *Waterbury Lock & Specialty Co.*, 35 CCPA 131, C.A.D. 384 (1948); *Great Lakes Foundry Sand Co.* v. *United States*, 15 Cust. Ct. 256, Abstract 50442 (1945), *appeal dismissed* 33 CCPA 190 (1945); *Air Carrier Supply Corporation et al.* v. *United States*, 35 Cust. Ct. 173, C.D. 1740 (1955), *aff'd*, 44 CCPA 116, C.A.D. 647 (1957).

After examining the record and considering the arguments of counsel, plaintiffs' exhibit 5 for identification and defendant's exhibit F for identification are deemed in evidence, and defendant's motion to exclude exhibits 2F, 2H, 2L, 2M, 2N, and 2Q, which were received in evidence at the trial, is denied.

The principal issues in the case are whether the imported articles were properly classified as luggage, and if not, whether they are classifiable as claimed by plaintiffs, as articles of plastics, not specially provided for, or as alternatively claimed by defendant, as handbags. A separate issue exists as to Court No. 69/8845 where defendant claims the merchandise is not of plastics and is classifiable as articles of textile materials.

At the trial there was received in evidence a document which lists the protests herein, together with a reference number or description of the merchandise involved in each, and an indication as to which merchandise is represented by a sample. (Exhibit 1.) Mr. Cohn testified that he had furnished plaintiffs' counsel with samples and had marked each of them so that they would correspond with the style number, carton number or the description in exhibit 1. These samples were offered and received in evidence as collective exhibit 2A through 2S.

The articles consist of plastic bags in various sizes, the smaller bags being about 9 by 9 by 4 inches and the larger ones 13 by 14 by 4 inches, more or less. They all have wide openings and large looped handles attached by rivets. Many have flat bottoms the same size as the openings. Some of the bottoms are reinforced with cardboard. Some have gussets on the sides. A few are lined. Some simulate fabrics of leather, two simulate alligator, and one a knobby material. Others have pictures or designs thereon, such as flowers or stripes. Exhibit 2K is decorated with raised flowers and has a pocket for an umbrella. Exhibit 2F has a zippered pocket. Exhibit 2C is a net string bag.

Mr. Cohn testified that exihibits 2A through 2S were shopping bags, and that the articles listed on exhibit 1 which were not represented by samples were shopping bags which were in no way unusual. He said he had sold shopping bags for 25 years, had been importing them for 15, and prior to that had manufactured them. He bought and sold the

instant merchandise as shopping bags and had seen women buy them for the purpose of shopping, that is, to take to a store to put parcels in. His customers—department stores, variety stores, and local stores—sell them as shopping bags. He has seen them advertised and displayed in stores as shopping bags. He did not sell his products to luggage stores and did not know of any luggage that sells for 39 or 49 cents, whereas retailers sold some of his shopping bags at such prices.

Mr. Cohn stated that when he manufactured shopping bags, they were primarily made of cotton because he did not know the process of applying a strong handle to a plastic. About 10 years ago he imported a paper shopping bag covered with vinyl plastic, the pioneer of the vinyl shopping bag. (Exhibit 4.) The vinyl material was used to ensure durability. He said, however, that both the vinyl-covered paper bag and a plastic bag, such as exhibit 2D, would tear if too much weight were put in.

Frank Ingber, an independent salesman representing importers and manufacturers, including Adolco Trading Co., testified that from 1937 to 1949 he had worked for Acorn Paper Co. selling paper shopping bags to the grocery and supermarket trade. The witness identified a collection of paper bags (collective exhibit 5) as shopping bags. The exhibit consists of a large number of paper bags of various dimensions. They have straight sides, a flat bottom, a wide opening, and two looped handles. Some are plain, some decorated, some have the name of a store printed thereon, some advertise a candidate for political office or a product. Mr. Ingber said they are usually given out by stores to hold purchases. He was not aware of any differences in use between paper and plastic shopping bags, except that the latter last longer. He had seen women carry groceries in both. At the time he sold paper shopping bags, they did not have vinyl bags, but now he is selling them to supermarket chains, distributors, and notions jobbers, as shopping bags. He did not sell them to luggage stores or luggage departments because they would not handle "anything as low end" as shopping bags.

Howard Bieber, director of sales of Prepac, Incorporated, a manufacturer and importer of vinyl products, testified that his firm sells shopping bags and luggage. He referred to articles like those in exhibit 2 as shopping bags and considered them "impulse items," that is, merchandise of low price that a customer does not think too much about before buying. He has heard them referred to as shopping bags at retail outlets, discount centers, and supermarkets, and by distributors. He defined a shopping bag as a carry bag used to carry small objects and packages home from the store.

He identified a group of bags which Prepac imports (collective exhibit 6) and said they were shopping bags similar to those in exhibit 2. He had seen them displayed in supermarkets, drug chains, and dis-

count centers on a rack or table. At times there were notations "shopping bags" and at times not. He described exhibits 7, 8, and 9 as advertisements and photographs showing the way such merchandise was sold. In all of these the term "shopping bag" appears. He had also seen advertisements calling such articles totes or tote bags.

The witness said his firm's shopping bags are sold to the consumer at prices ranging from $0.35 to $1.49 and that the instant merchandise is sold in the same price range. It cannot usually be sold to or in luggage stores or departments because it is too cheap an item.

According to Mr. Bieber, the term "tote" is a general one used to indicate all types of carry bags, regardless of whether they are used for shopping or travel. There are totes which are not shopping bags. In fact, his firm sells an article called a travel tote, which is made of heavier vinyl than shopping bags. (Exhibit 10.) It has inside and outside pockets; the handles are different; it has a different shape, can hold heavier objects, is more durable and has a closure which can be locked.

Mr. Cohn said a tote bag is made of a different material, such as leatherette, and is not an "outspoken shopping bag." Mr. Ingber said the word "tote" is a general term used by many manufacturers to refer to carry bags. A school bag or a duffle bag may be referred to as a tote bag. He said defendant's exhibit B depicted three bags with handles which could be tote bags and looked like something his wife would use as a handbag.

Mr. Cohn was aware that people used his merchandise for purposes other than shopping, such as to carry lunch or take to the beach. He said his products were waterproof, multipurpose bags, but that he imports and sells them as shopping bags. He also sells a bag which is more appropriate for use at the beach because it has a string which can be drawn to close the bag and prevent sand from getting in. (Exhibit 3.)

Mr. Bieber had traveled in many areas of the United States and had seen articles like exhibit 2 used for shopping and for other purposes, but primarily for shopping. He did not believe they had lost their identity as shopping bags by the other uses, because they are basically used for shopping. He said they were not used for travel for the same purposes as luggage, which in his view included suitcases, suit bags, dress bags, and travel bags.

In the opinion of Mr. Ingber, the articles herein are not travel bags and would not be used to carry clothing. Defendant's witness Archie Gellis considered them to be in the tote bag field, not luggage, such as men's suit bags, 24-inch carry-ons, and traveling bags. He did not think they could be used for traveling.

Barry Bienen, customs inspector at Kennedy Airport, testified that passengers bring in their belongings in all types of articles, including expensive and popular brands of luggage, knapsacks, duffle bags, specialized containers, and items such as those in exhibit 2. They use the latter to supplement their other luggage, and, in rare instances, as their only luggage. People carry personal effects in such bags, and also books, magazines, sweaters, foodstuffs, and purchased articles. The witness and his wife used bags such as exhibit 2G to carry the dog's paraphernalia when they travel.

Stephen Wolf, another customs inspector, had seen two women carrying bags, such as exhibit 2, that morning, to hold lunches, sweaters, and newspapers. He did not know whether they were going shopping.

John F. Casey, a special agent in the Customs Bureau, testified that in June 1973 he went to the Cross County Shopping Center in Westchester County and observed that Gimbel's had no display of any tote bags; that such articles were in an enclosed shelf below the regular mechandise, and that no paper shopping bags were around. In Wanamaker's he found shopping bags, such as the instant merchandise, being sold in the luggage area. He purchased a bag tagged "Utility Bag — Ideal for shopping, travel, sewing & knitting, books, extra pair of shoes, cosmetics, etc." for $2. (Exhibit G.)

The witness also visisted Woolworth's and found bags like those in exhibit 2 on a shelf with canvas bags, leather bags, and pocketbooks. He found similar merchandise in Uttal's Luggage Store. The day before the trial he saw shopping bags being sold in Reade's Drugstore on Broadway under a sign "tote-alls" for shopping, travel, beach, shoes. He purchased one for 79 cents. (Exhibit F.)

He had seen only one bag like exhibit 2 being carried in the shopping center. He had seen others at Belmont Racetrack, Rye Beach, and Jones Beach, used to carry rain gear, compact umbrellas, newspapers, racing forms, crocheting and sewing equipment, beachwear, towels, and foodstuffs. He saw one for sale as a tote bag for $1.

Since the merchandise was assessed with duty as luggage by customs officials, plaintiffs have the burden of overcoming the presumption of correctness attaching to that action and of establishing the claimed classification as correct. *United States* v. *Victoria Gin Co., Inc., et al.*, 48 CCPA 33, C.A.D. 759 (1960); *Hayes-Sammons Chemical Co.* v. *United States*, 55 CCPA 69, C.A.D. 935 (1968); *Nomura (America) Corp.* v. *United States*, 58 CCPA 82, C.A.D. 1007, 435 F. 2d 1319 (1971).

The first question to be considered is whether the instant merchandise (except for that in Count No. 69/8845) was properly classified as luggage.

For the purpose of the tariff schedules, luggage has been defined in schedule 7, part 1D, headnote 2(a), *supra*, to cover

> (i) travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel, and
>
> (ii) brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (physicians', sample, etc.), and like containers and cases designed to be carried with the person, except handbags as defined herein.

The bags involved herein are not among the named articles in either subsection. The question thus is whether they are "like articles designed to contain clothing or other personal effects during travel" or "like containers and cases designed to be carried with the person, except handbags."

The exemplars in subsection (i) are all articles customarily used for travel, which can be closed and usually locked. The bags before the court cannot be locked or even closed securely. They could not be handled as checked baggage on trains, buses or airplanes, because are articles in them would fall out when given normal baggage handling. For the same reason, they could not be placed in overhead racks or airplane lockers. Moreover, people do not ordinarily carry personal clothing in open bags where it can become soiled or is in danger of falling out. The instant bags are not designed or suitable for carrying clothing or personal effects during travel, and according to the evidence presented, are rarely so used. They may be used to supplement luggage or to carry purchases made on a trip. They are not sold in stores which handle luggage and are much cheaper articles than those sold as luggage. Several witnesses said they could not be used for travel in the same way as luggage.

The exemplars in subsection (ii) are containers or cases which are designed to hold specific items which give them their names: brief cases to hold papers, school bags to hold school articles, golf bags to hold golf equipment, gun cases to hold guns, camera cases to hold cameras, etc. The imported articles are not of this type. They are, of course, containers designed to be carried with the person, but they are not "like" the containers or cases enumerated. The provision does not embrace all containers and cases designed to be carried with the person, but only those *ejusdem generis* with those enumerated. *Cf. Joanna Western Mills Company* v. *United States* (*Unitron Import Corp., Party in Interest*), 64 Cust. Ct. 218, C.D. 2983, 311 F. Supp. 1328 (1970), and *Venaire Shade Corp.* v. *United States*, 66 Cust. Ct. 469,

C.D. 4235 (1971), construing the term "like furnishings" as those having a common purpose and function with the enumerated furnishings.

In the instant case, the imported bags are not cases or containers for specific articles or equipment. They are flexible bags with wide openings so that various articles of different sizes and shapes can be put therein and carried. They are bought, sold, and commonly called shopping bags. They are designed primarily for use while shopping, to take articles home from the store. They are used for that purpose and also for convenience in carrying various (but not specific) articles. They have a different function from the enumerated examples and are not "like" them.

Defendant argues that because subsection (ii) provides for "like containers and cases designed to be carried with the person, *except handbags as defined herein*," Congress did not intend to limit coverage to any specific type of container or case. The exception, however, does not obviate the requirement that the containers be "like" those mentioned. Had Congress intended the broad coverage proposed by defendant, it would have provided for "*all* containers and cases designed to be carried with the person, except handbags."

I conclude that articles of the kind involved herein are neither travel goods nor cases and containers like portfolios, school bags, camera cases, etc. They are not luggage, as defined by the tariff schedules, and are not properly classifiable as such. The fact that some of the involved bags have added features, such as a zippered pocket or an umbrella pocket, is not sufficient to put them into the classification luggage. Whether or not other added features or changes or the use of other material might do so is not before the court at this time. In view of the large number of samples and the testimony of Mr. Cohn that the articles not represented by samples were shopping bags in no way unusual, I find that the articles unrepresented by samples may properly be treated in the same manner as those that were.

Defendant claims that if the merchandise is not classifiable as luggage, it is dutiable under item 706.60, as handbags. The term "handbags" is defined in schedule 7, part 1D, headnote 2(b), to cover

> pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls, but not including luggage or flat goods as defined herein or shopping bags.

Defendant claims that the instant articles do not fall within the exception on the ground that they are not shopping bags but are tote bags and that tote bags are women's handbags, citing dictionary definitions of the term "tote bag." The evidence establishes, however, that the articles are bought, sold, and commonly called shopping bags

and that the term tote or tote bag is used in the trade to cover various types of carry bags, including shopping bags, and bags which may be luggage (duffle bags, school bags or travel totes like exhibit 10) and others which may be handbags (exhibit B). Thus the fact that an article may be bought, sold or referred to as a tote or a tote bag does not establish that it is a handbag, as defined in the tariff schedules. Whatever may be the dictionary definitions, the specific definition in the tariff schedules is controlling for customs purposes. That requires that a handbag be one of the exemplars or a similar article.

The articles listed, pocketbooks, purses, shoulder bags, clutch bags, are used to carry money, licenses, credit cards, cosmetics and other personal items. They have a closure, and sometimes several of them, to prevent valuables and small articles from falling out or being stolen. Shopping bags on the other hand, have no closure but have wide openings to facilitate the insertion of variously shaped packages. Even without the specific exception for shopping bags in the definition, articles like those involved herein could not be regarded as similar to the exemplars and classifiable as handbags. Congress clearly did not intend them to be so classed.

Since these articles are of plastics, and there is no tariff provision for shopping bags, or for bags generally, they are classifiable as claimed under item 774.60, *supra*, as articles, not specially provided for, of plastics.

In Court No. 69/8845 the complaint alleges that the merchandise consists of shopping bags "of plastics" and claims that it is classifiable under item 774.60, *supra*, as articles of plastics. Defendant's original answer denied that the articles were shopping bags and averred that they were classified as luggage of plastics. At the trial a sample of the merchandise was received in evidence as exhibit 2C. It is a net string bag in a small plastic pouch. Double strands are joined together in such a way as to form a mesh bag. The strands are braided to form the handles and clips are attached.

Defendant was granted leave to file an amended answer. In that document, filed subsequent to the trial, it is denied that the merchandise is "of plastics," and averred that it is "of textile materials." It is claimed that the merchandise consists of textile net articles classifiable under item 386.08, *supra*, and it is requested that the merchandise be held so classifiable or that plaintiffs' claim for classification under item 774.60 be overruled and the customs classification affirmed. No reply was made to the amended answer.

Under *R. H. Macy & Co., Inc.* v. *United States*, 57 CCPA 115, C.A.D. 988, 428 F. 2d 856 (1970), and *United Merchants, Inc.* v. *United States*, 60 CCPA —, C.A.D. 1073, 468 F. 2d 208 (1972), it was held that the

provision in item 772.35 for curtains and drapes of rubber or plastics, covered such articles only when the plastic material was in sheet form, but not when the material was woven from a polyester yarn spun from man-made fibers. The court in the *Macy* case said (p. 118):

> The court below concluded from this passage that there was a distinction to be drawn between products of man-made fibers, which were to be classified under the textile schedule *even if* the fibers were of rubber or plastic, and "other articles of rubber or plastics," which would be classified under part 12 of schedule 7. The court concluded:
>
> > We are inclined to the view that the term "plastic" as employed in part 12 of schedule 7 describes a form as well as a substance, and does not cover plastic materials which have been converted into textile materials.
> >
> > A yarn which was produced from a basic plastic substance has by that process of manufacture taken on the status of a textile material from which a textile product will be produced, and for tariff purposes may no longer be considered a "plastic" but rather a man-made fiber.

In view of these decisions, it is evident that the merchandise represented by exhibit 2C is not classifiable under schedule 7, part 12, since it is in the form of a product made from textile materials. For this reason, plaintiffs' claim that this merchandise is classifiable under item 774.60, *supra*, as articles of plastics, not specially provided for, cannot be sustained.

For the reasons stated, judgment will be entered severing entry No. 235923 from Court No. 70/65713; denying defendant's motion to exclude exhibits 2F, 2H, 2L, 2M, 2N, and 2Q; dismissing Court Nos. 69/8845, 68/65804, 69/7629, 69/50143, 69/50144, and 70/20678, and Court No. 69/51817 as to Carton No. 366, Court No. 69/52229 as to Style No. A 618, Court No. 70/43187 as to Carton Nos. 49/109, Court No. 70/49107 as to Carton No. 1198, and Court No. 70/60821 as to Style No. 1095; and sustaining the claim as to all other merchandise, which is held properly dutiable under item 774.60, Tariff Schedules of the United States, as modified by Presidential Proclamation No. 3822, T.D. 68-9, as articles, not specially provided for, of plastics, at the rate of duty in effect on the respective dates of entry of the merchandise.

Decisions of the United States Customs Court

Custom Rules Decisions

(C.R.D. 73–28)

C. F. LIEBERT *v.* UNITED STATES

Opinion and Order on Defendant's Motion to Strike Complaint

Court No. 70/27045

[Motion denied.]

(Dated November 27, 1973)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*David B. Greenfield*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant has moved to strike the complaint filed in this action, which is captioned "BORDER BROKERAGE CO., INC., Plaintiff v. THE UNITED STATES, Defendant".[1] The basis of defendant's motion is that Border Brokerage is not the plaintiff in this action, but rather a complete stranger thereto, and hence was not authorized to file the complaint pursuant to rule 4.4.

In its opposition to defendant's motion, plaintiff concedes that Border Brokerage was improperly named as plaintiff in the caption of the complaint in lieu of the proper party-plaintiff, C. F. Liebert, importer of record who filed the protest. Plaintiff, however, argues that the error was inadvertent, and occasioned by pressure of time "when counsel were extremely busy with the task of removing the many actions which were in the 1970 Reserve File". Furthermore, plaintiff insists that defendant has not been prejudiced by the error in the caption of the complaint, and that in the interests of justice, C. F. Liebert should have the opportunity to file an amended complaint in its own name.

[1] Defendant's motion papers are similarly captioned.

I agree.

Pursuant to rules 14.6(a) and 14.9(c), effective October 1, 1970,[2] this case was among approximately 177,000 actions pending before the Customs Court which were placed in a classification designated as the October 1970 reserve file. Under rule 14.6(c) a period of two years, to and including October 31, 1972, was allowed during which time pending suits might be removed from the reserve file, or they would be dismissed automatically by the clerk for failure to prosecute upon the expiration of the time provided. Under rule 14.6(b) an action could be removed from the October 1970 reserve file by filing a complaint pursuant to rule 4.4. On October 31, 1972—the final date—the instant complaint was filed bearing the court number of this action, but not in the name of plaintiff. If this complaint is stricken, as requested by defendant, then no complaint exists to preclude dismissal of the action for failure to prosecute.

It has been held that a complaint which is defective because the wrong party is named as the plaintiff may be amended by substituting the proper party as plaintiff. *Border Brokerage Co.* v. *United States*, 71 Cust. Ct. —, C.R.D. 73–20 (1973); *Boise Cascade Corp.* v. *United States*, 71 Cust. Ct. —, C.R.D. 73–17 (1973); *International Mercantile Corp.* v. *United States*, 71 Cust Ct. —, C.R.D. 73–16 (1973).

Under all the circumstances, I see no serious prejudice to defendant if its motion to strike the complaint is denied, and plaintiff is afforded an opportunity to file an amended complaint substituting C. F. Liebert, as plantiff in lieu of Border Brokerage. Accordingly, it is hereby ORDERED:

1. Defendant's motion to strike the complaint is denied.

2. C. F. Liebert, the importer of record and the plaintiff in this action, shall have a period of twenty days from and after the date of service of this order within which to file an amended complaint, substituting itself as plaintiff in lieu of Border Brokerage Co., Inc.

3. If upon the expiration of said twenty-day period, no amended complaint shall have been filed by said plaintiff, this action shall be deemed dismissed for failure to prosecute, without any further proceeding; and in such event, the clerk is directed to enter an order of dismissal without further order.

---

[2] October 1, 1970 is the effective date both of the Customs Courts Act of 1970, Pub. L. 91–271, and the present court rules.

(C.R.D. 73-29)

C. F. Liebert *v.* United States

Opinion and Order on Defendant's Motion to Strike Complaint

Court No. 70/35051

[Motion denied.]

(Dated November 27, 1973)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*David B. Greenfield*, trial attorney), for the defendant.

Newman, Judge: Defendant has moved to strike the complaint filed in this action, which is captioned "Border Brokerage Co., Inc., Plaintiff v. The United States, Defendant".[1] The basis of defendant's motion is that Border Brokerage is not the plaintiff in this action, but rather a complete stranger thereto, and hence was not authorized to file the complaint pursuant to rule 4.4.

In its opposition to defendant's motion, plaintiff concedes that Border Brokerage was improperly named as plaintiff in the caption of the complaint in lieu of the proper party-plaintiff, C. F. Liebert, importer of record who filed the protest. Plaintiff, however, argues that the error was inadvertent, and occasioned by pressure of time "when counsel were extremely busy with the task of removing the many actions which were in the 1970 Reserve File". Furthermore, plaintiff insists that defendant has not been prejudiced by the error in the caption of the complaint, and that in the interests of justice, C. F. Liebert should have the opportunity to file an amended complaint in its own name.

I agree.

Pursuant to rules 14.6(a) and 14.9(c), effective October 1, 1970,[2] this case was among approximately 177,000 actions pending before the Customs Court which were placed in a classification designated as the October 1970 reserve file. Under rule 14.6(c) a period of two years, to and including October 31, 1972, was allowed during which time pending suits might be removed from the reserve file, or they would be dismissed automatically by the clerk for failure to prosecute upon the expiration of the time provided. Under rule 14.6(b) an action could be removed from the October 1970 reserve file by filing a complaint pursuant to rule 4.4. On October 31, 1972—the file date—the instant com-

[1] Defendant's motion papers are similarly captioned.

[2] October 1, 1970 is the effective date both of the Customs Courts Act of 1970, Pub. L. 91-271, and the present court rules.

plaint was filed bearing the court number of this action, but not in the name of plaintiff. If this complaint is stricken, as requested by defendant, then no complaint exists to preclude dismissal of the action for failure to prosecute.

It has been held that a complaint which is defective because the wrong party is named as the plaintiff may be amended by substituting the proper party as plaintiff. *Border Brokerage Co.* v. *United States*, 71 Cust. Ct. —, C.R.D. 73–20 (1973); *Boise Cascade Corp.* v. *United States*, 71 Cust. Ct. —, C.R.D. 73–17 (1973); *International Mercantile Corp.* v. *United States*, 71 Cust. Ct. —, C.R.D. 73–16 (1973).

Under all the circumstances, I see no serious prejudice to defendant if its motion to strike the complaint is denied, and plaintiff is afforded an opportunity to file an amended complaint substituting C. F. Liebert, as plaintiff in lieu of Border Brokerage. Accordingly, it is hereby ORDERED:

1. Defendant's motion to strike the complaint is denied.

2. C. F. Liebert, the importer of record and the plaintiff in this action, shall have a period of twenty days from and after the date of service of this order within which to file an amended complaint, substituting itself as plaintiff in lieu of Border Brokerage Co., Inc.

3. If upon the expiration of said twenty-day period, no amended complaint shall have been filed by said plaintiff, this action shall be deemed dismissed for failure to prosecute, without any further proceeding; and in such event, the clerk is directed to enter an order of dismissal without further order.

(C.R.D. 73–30)

TREE PRODUCTS CO. *v.* UNITED STATES

Opinion and Order on Defendant's Motion To Strike Complaint

Court No. 70/54593

[Motion denied.]

(Dated November 27, 1973)

Glad & Tuttle (*John McDougall* of counsel) for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*David B. Greenfield*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant has moved to strike the complaint filed in this action, which is captioned "J. T. STEEB & COMPANY, Plaintiff v. THE UNITED STATES, Defendant." [1] The basis of defend-

[1] Defendant's motion papers are similarly captioned.

ant's motion is that J. T. Steeb is not the plaintiff in this action, and hence was not authorized to file the complaint pursuant to rule 4.4.

In its opposition to defendant's motion, plaintiff concedes that J. T. Steeb (the importer of record) was improperly named as plaintiff in the caption of the complaint in lieu of the proper party-plaintiff, Tree Products Co., the ultimate consignee who filed the protest. Plaintiff, however, argues that the error was inadvertent, and occasioned by pressure of time "when counsel were extremely busy with the task of removing the many actions which were in the 1970 Reserve File." Furthermore, plaintiff insists that defendant has not been prejudiced by the error in the caption of the complaint, and that in the interests of justice, Tree Products Co. should have the opportunity to file an amended complaint in its own name.

I agree.

Pursuant to rules 14.6(a) and 14.9(c), effective October 1, 1970,[2] this case was among approximately 177,000 actions pending before the Customs Court which were placed in a classification designated as the October 1970 reserve file. Under rule 14.6(c) a period of two years, to and including October 31, 1972, was allowed during which time pending suits might be removed from the reserve file, or they would be dismissed automatically by the clerk for failure to prosecute upon the expiration of the time provided. Under rule 14.6(b) an action could be removed from the October 1970 reserve file by filing a complaint pursuant to rule 4.4. On October 31, 1972—the final date—the instant complaint was filed bearing the court number of this action, but not in the name of plaintiff. If this complaint is stricken, as requested by refendant, then no complaint exists to preclude dismissal of the action for failure to prosecute.

It has been held that a complaint which is defective because the wrong party is named as the plaintiff may be amended by substituting the proper party as plaintiff. *Border Brokerage Co.* v. *United States*, 71 Cust. Ct. —, C.R.D. 73–20 (1973); *Boise Cascade Corp.* v. *United States*, 71 Cust. Ct. —, C.R.D. 73–17 (1973); *International Mercantile Corp.* v. *United States*, 71 Cust. Ct. —, C.R.D. 73–16 (1973).

Under all the circumstances, I see no serious prejudice to defendant if its motion to strike the complaint is denied, and plaintiff is afforded an opportunity to file an amended complaint substituting Tree Products Co. as plaintiff in lieu of J. T. Steeb. Accordingly, it is hereby ORDERED:

1. Defendant's motion to strike the complaint is denied.

2. Tree Products Co., the ultimate consignee and the plaintiff in this action, shall have a period of twenty days from and after the

[2] October 1, 1970 is the effective date both of the Customs Courts Act of 1970, Pub. L. 91–271, and the present court rules.

date of service of this order within which to file an amended complaint substituting itself as plaintiff in lieu of J. T. Steeb & Company.

3. If upon the expiration of said twenty-day period, no amended complaint shall have been filed by said plaintiff, this action shall be deemed dismissed for failure to prosecute, without any further proceeding; and in such event, the clerk is directed to enter an order of dismissal without further order.

(C.R.D. 73–31)

KURT S. ADLER, INC., ET AL. *v.* UNITED STATES

On Plaintiff's Motion (1) For a Rehearing to Set Aside an Order Granting Defendant's Motion for a More Definite Statement; and (2) for Leave to Take an Interlocutory Appeal

Court Nos. 66/14633, etc.

[Motions denied.]

(Dated November 30, 1973)

Serko & Sklaroff (*Joel K. Simon* and *Irving A. Mandel* of counsel) for the plaintiffs.

Irving Jaffe, Acting Assistant Attorney General (*Frank J. Desiderio*, trial attorney), for the defendant.

MALETZ, Judge: On May 14, 1973, defendant filed a motion, pursuant to rule 4.7(d), for a more definite statement in the form of amendments to each of 219 complaints. Plaintiffs interposed no objection to the motion and the court, accordingly, granted it on June 20, 1973. On July 18, 1973, plaintiffs filed (1) the present motion for rehearing, pursuant to rules 12.1(a) and (b), to set aside the court's order of June 20, 1973;[1] and (2) a motion for leave to take an interlocutory appeal, pursuant to rule 13.2(a), in the event the motion for rehearing to set aside the court's order of June 20, 1973 is denied.[2]

---

[1] Plaintiffs, it is to be observed, have failed to comply with rule 12.1(b) which requires that the moving party state clearly the grounds upon which that party relies for the granting of a rehearing. However, in light of the fact that the defendant has, in its memorandum of opposition, dealt in detail with the merits of plaintiffs' motion, and in view of the particular circumstances here presented, the court will, upon its own motion under rule 12.1(f), rehear the matter.

[2] Rule 13.2(a) provides in part that "[w]hen an interlocutory order issued by a judge * * * of the court includes therein a statement that a controlling question of law is involved as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate determination of the litigation, * * * an application may be made to the Court of Customs and Patent Appeals for an appeal within 10 days after the entry of the order."

At the outset it is to be noted that all 219 complaints are identical, with the exception of an individually attached schedule A to each complaint which sets forth the Court No., the entry number and date, the date of liquidation, and the date and place where the protest was filed. Each of the attached schedule A's provides the foregoing information in the following form:

SCHEDULE A

COURT NO.:
ENTRY NO. and DATE:
DATE OF LIQUIDATION:
DATE PROTEST FILED:
PLACE PROTEST FILED: Customs Facilities,

Also pertinent to the present controversy are paragraphs 3 and 4 of each complaint, all of which read as follows:

> The above named plaintiff * * * complaining against the above named defendant with respect to the matter enumerated on Schedule A annexed, alleges as a cause of action:
>
> * * * * * * *
>
> 3. The merchandise described as pixies, figures of angels, mice, Santas and snowmen with or without other words of description, was assessed with duty at 35% ad valorem (1967) or 31% ad valorem (1968) or 28% ad valorem (1969) or 24% ad valorem (1970) under Item 737.90, Tariff Schedules of the United States, as modified by the Geneva (1967) Protocol to GATT and Other Agreements, and Presidential Proclamation, T.D. 68-9, as toys, not specially provided for, or with duty at 35% ad valorem (1967) or 31% ad valorem (1968) or 28% ad valorem (1969) or 24% ad valorem (1970) under item 737.20, TSUS, as modified, *supra*, as dolls; or with duty at 35% ad valorem (1967) or 31% ad valorem (1968) or 28% ad valorem (1969) or 24% ad valorem (1970) under item 737.40, TSUS, as modified, *supra*, as other toy figures of animate objects.
>
> 4. It is claimed that the articles are properly classifiable as other articles not specially provided for, of rubber or plastic with duty at 17% ad valorem (1967) or 15% ad valorem (1968) or 13.5% ad valorem (1969) or 11.5% ad valorem (1970) under item 774.60, TSUS, as modified, *supra*.

Against this background, the court's order of June 20, 1973—which plaintiffs seek to set aside—directs that:

> * * * within thirty days from the date of service of this order plaintiffs shall file a more definite statement in the form of an amended complaint for each and every protest number listed in the schedule annexed hereto, which, in addition to or in lieu of the allegations of the original complaints, as appropriate, shall set forth the following allegations in separately numbered paragraphs:

1. The specific merchandise which is the subject of plaintiffs' complaints;
2. The rate of duty and item number under which plaintiffs claim the merchandise was assessed;
3. The rate of duty with which plaintiffs claim the merchandise should have been assessed under the item number claimed applicable by plaintiffs;
4. The date of liquidation;
5. The date and place where the protest was filed.

For the reasons that follow, both the motion to set aside this order and the motion to take an interlocutory appeal will be denied.

By way of introduction, it is well to observe that the objectives of the new rules of pleading in this court are to insure that the legal and factual issues be clear, particularized and narrowed. As cogently stated by Judge Newman in *Mitsubishi International Corp.* v. *United States*, 71 Cust. Ct. —, —, C.R.D. 73-19 (1973):

> [I]nsofar as pleadings are concerned, it should be stressed that the court's present rules (effective October 1, 1970 concurrently with the Customs Courts Act) have newly created a formal pleading and motion practice that were nonexistent under the court's former rules of practice. Indeed, under the prior practice of this court there were no complaints and answers filed before trial. Consequently, under that former practice there developed much uncertainty concerning the factual and legal contentions of the parties, and difficulty for the court in narrowing the issues. *Thus, it was the plain intent and objective of the new rules of pleading to require the plaintiff in his complaint to concisely allege the contentions of fact and law in support of his position, so that after a responsive answer by the defendant the legal and factual issues would be clear, particularized and narrowed.* [Emphasis added.]

To similar effect are the following apt comments of Judge Re in *Berkey Technical Corp.* v. *United States*, 71 Cust. Ct. --, —, C.R.D. 73-27 (1973):

> Traditionally, pleadings have served four major functions: (1) they give notice of the nature of the claim or defense; (2) they state the facts each party believes to exist; (3) they serve to narrow the issues that must be litigated; and (4) they provide a means for the speedy disposition of sham and insubstantial claims and defenses. *Thus, the overriding purpose of pleadings in this court is the framing of the issue or issues that need to be litigated.* [Emphasis added.]
>
> While rule 4.7(d) of the rules of this court is based in part upon rule 12(e) of the Federal Rules of Civil Procedure, it does not contain language which limits its application only to those in-

stances where the pleading complained of is so vague or ambiguous that a proper response cannot be framed.[2]

To help accomplish the objectives of this court's new rules of pleading, rule 4.5B provides that the complaint in a protest action shall set forth:

(1) a statement of plaintiff's standing in the action;

(2) the date of liquidation or other customs decision complained of;

(3) the date and place where the protest was filed;

(4) a statement, where appropriate, that all liquidated duties have been paid;

(5) a statement of the customs decision complained of, including, where appropriate, the tariff description and the paragraph or item number of the statute, including all modifications and amendments thereof, under which the merchandise was classified and the rate of duty imposed;

(6) a statement of the nature of the alleged error in the customs decision;

(7) where appropriate, the tariff description and the paragraph or item number of the statute, including all modifications and amendments thereof, under which the merchandise was classified properly subject to classification and the rate of duty claimed to be applicable;

(8) concise allegations of plaintiff's contentions of fact and law in support of his position; and

(9) a demand for judgment for the relief to which plaintiff deems himself entitled.

Finally, rule 4.3(b) provides:

All allegations of claims or defense shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. A paragraph may be referred to by nu mber in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense, other than denials, shall be stated in a separate count or defense, whenever a separation facilitates the clear presentation of the matter set forth.

With these considerations in mind, it is apparent that the present complaints on their face are defective in that they do not conform to

---

[2] Rule 12(e) of the Federal Rules of Civil Procedure provides in part:

(e) **Motion for More Definite Statement:** If a pleading to which a responsive pleading is premitted is *so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading,* he may move for a more definite statement before interposing his responsive pleading. * * * [Emphasis added.]

In contrast, rule 4.7(d) of this court provides in part:

(d) **Motion for More Definite Statement:** Any party may move for an order to make any pleading more definite and certain. The motion shall point out the defects complained of and the details desired. * * *

rules 4.5B(5), 4.5B(7), and 4.3(b). For example, paragraph 3 of each of the complaints does not particularize which merchandise is the subject of that action. Thus, the merchandise is described in that paragraph as "pixies, figures of angels, mice, Santas and snowmen, with or without other words of description." This allegation is far from sufficient to inform the court and the defendant as to what merchandise in any given action plaintiffs are proceeding to litigate.

With further reference to paragraph 3, rule 4.5B(5) (as previously noted) requires that the complaint in a protest set forth a statement of the customs decision complained of, including the item number of the statute under which the merchandise was classified and the rate of duty imposed. Notwithstanding this clear requirement, paragraph 3 of each complaint alleges that the merchandise was assessed with duty under item 737.90 at the rate of 35% or 31% or 28% or 24%, or was assessed with duty under item 737.20 at the rate of 35% or 31% or 28% or 24%, or was assessed with duty under item 737.40 at the rate of 35% or 31% or 28% or 24%. Such a sweeping allegation fails completely to indicate the item number under which the merchandise in any given action was classified and which of the four rates under any one of the item numbers was assessed on the merchandise. Considering (as we have seen) that the purpose of pleadings in this court is to delineate the issues of agreement and dispute between the parties, plaintiffs' lack of specificity in paragraph 3 of their complaints totally subverts the intent of the rules.

Additionally, it will be recalled that rule 4.5B(7) requires that the complaint in a protest set forth the item number of the statute under which the merchandise is claimed to be properly subject to classification and *the rate of duty claimed to be applicable*. Paragraph 4 of each of plaintiffs' complaints alleges that the merchandise should have been classified under item 774.60, with duty at 17%, 15%, 13.5% or 11.5% ad valorem, depending upon the year involved. Since only one entry is involved in each case, only one rate of duty under each item is applicable, these not being alternative claims within the intent of the rules. In this circumstance, plaintiffs have failed to inform the court and the defendant as to *which* of the four rates is claimed to be applicable in each of these actions.

On a further aspect, rules 4.5B (2) and (3) require that the complaint in a protest set forth the date of liquidation and the date and place where the protest was filed. It is true that plaintiffs have attached a schedule A to each of the complaints which contains the court number, the entry number and date of entry, the date of liquidation, the date the protest was filed and the place where the protest was filed. However, in no complaint do plaintiffs refer to or incorporate by reference each applicable schedule A in numbered para-

graphs as required by rule 4.3(b), which (as previously noted) requires that the "allegations of claim or defense" be made in numbered paragraphs. Obviously, if the complaint in an action contains substantive allegations in other than numbered paragraphs, it is not possible for defendant to structure the answer in numbered paragraphs in conformity with the rule.

The short of the matter is that the present complaints not only fall far short of complying with the rules of pleading of this court, they also contravene the objectives of such rules—which (as stressed before) are designed to aid in delineating and narrowing the factual and legal issues. Plaintiffs' counsel assert, however, that they have

> filed several thousand other complaints for plaintiffs and other clients which were structured in the same manner as the complaints in this action. The filing of more definite statements in all these instances would place an enormous burden on these various plaintiffs and counsel, without providing any substantial benefits to either the parties or to the Court. The information that defendant requests already appears in the record in the protest, entry papers and schedule attached to the complaints.

In this connection, it is quite true that by examining the individual protests, the entry papers and the schedule attached to each complaint, it is possible in some cases for the court and defendant to determine which item of merchandise and what rate of duty are specifically applicable to the action in which the complaint was filed. However, to require the court and defendant to analyze the entry papers and protests in order to piece together factual allegations which should be specified in the complaints is a burden that is neither contemplated by the rules nor justified in actual practice. This burden, rather, is one that the rules impose on the plaintiffs—not on the defendant or the court.[4]

What is more, a sampling of the protests and entry papers in just a few of the present actions shows a major variance as between the merchandise covered by the protest and the merchandise covered by the complaint. For example, the protest filed for Court No. 69/54168 only covers merchandise described as "tree ornament figures" classified under item 737.20. The commercial invoice therein covers mer-

[4] It is interesting to speculate as to what the situation would be if defendant interposed a general denial to paragraph 3 of the present complaints. Possibly, plaintiffs would then move for a more definite statement in order to know which aspect of the paragraph defendant was denying. In fact, this very type of situation occurred in *Berkey Technical Corp. v. United States, supra,* 71 Cust. Ct.—, where plaintiff's counsel—who likewise represent the plaintiffs in the present case—moved for a more definite statement regarding a paragraph in defendant's answer which denied a paragraph in the complaint that was couched in general terms. In denying plaintiff's motion, the court observed "that an answer needed to be only as precise as the complaint. * * * That is, if the complaint is drafted in general terms, the defendant would be justified in responding by a general denial." 71 Cust. Ct. at —.

chandise described as "Tree ornament figures," "Snow baby dolls," and "Boy and girl dolls," classified under item 737.20. On the other hand, the complaint in this action speaks of merchandise described as "pixies, figures of angels, mice, Santas and snowmen, with or without other words of description." Hence, even examination of the entry papers and protest in this action fails to shed any light on the actual contentions of the plaintiffs.[5]

As further ground for setting aside the court's order of June 20, 1973, plaintiffs argue that the "vast majority" of the present cases were suspended and that defendant's motion for a more definite statement is therefore improper as contrary to rule 14.8.[6] This argument, in my view, is totally without merit. For there is no provision in any rule of this court that provides special dispensation for complaints in suspended actions. On the contrary, rule 4.5B—which specifies what allegations shall be set forth in a complaint in a protest action—is applicable to *all* such complaints whether they be in an active or suspense status.

Further, plaintiffs contend that defendant has been able to answer numerous complaints similar in all material respects to those here in issue and that in such circumstances, defendant's motion for a more definite statement is without basis, serving merely to burden the court and plaintiffs with additional and unecessary paper work. Again, I cannot agree. For (as previously mentioned) while it may be possible in such cases for the defendant to frame an answer by examining the individual protests, the entry papers and the attached schedule and thus piece together the factual allegations which should have been specified in the complaint, this is a burden that under the rules is not to be shouldered by the defendant—or the court. The point is that rule 4.5B clearly and specifically sets forth what shall be contained in a complaint in a protest action. In such a situation, to allow the plaintiffs to ignore crucial requirements of this rule on the basis stated here would be to render a major part of the rule a nullity for all practical purposes.

Finally, plaintiffs insist that *Stahlwood Toy Mfg. Co., Inc.* v. *United States*, 70 Cust. Ct. 368, C.R.D. 73–13 (1973), is dispositive of the issue in this case. In *Stahlwood* the court, on reconsideration, denied defendant's motion for a more definite statement on the ground that "by reference to the official entry papers and the various items of merchandise and rates of duty recited in the complaint, the complaints in many of these cases can be answered and the controversy limited to such items of merchandise and rates of duty which, as recited in the complaint,

[5] A random sampling of some other cases, e.g., 67/65711, 68/452, 68/12345, 69/51843, demonstrates that this is not an isolated incident.

[6] Rule 14.8 pertains to the suspension disposition file and has no bearing whatever on the present problem.

can be identified in the official entry papers covered by the complaint." 70 Cust. Ct. at 371. However, for the reasons set out previously, I cannot agree with this rationale as justifying non-compliance by a plaintiff with the rules prescribing the contents of a complaint. In sum, I conclude that plaintiffs' motion to set aside the order of June 20, 1973 must be denied.[7]

We come now to plaintiffs' motion for leave to take an interlocutory appeal by including in the foregoing order a rule 13.2(a) statement (see note 2, *supra*). As to this, I think it clear that "an immediate" appeal from the order would not "materially advance the ultimate termination of the litigation." To the contrary, allowance of such an appeal would delay still further—and for no justifiable reason—the ultimate termination of cases which already have been too long delayed. Accordingly, the motion for leave to take an interlocutory appeal will be denied. See *A. N. Deringer, Inc.* v. *United States*, 70 Cust. Ct. 337, C.R.D. 73-4 (1973); *C. L. Hutchins & Co., Inc.* v. *United States*, 67 Cust. Ct. 354, 356-7, C.D. 4297, 334 F. Supp. 188, 190-1 (1971).

It is therefore ORDERED:

1. That plaintiffs' motion for a rehearing to set aside the court's order of June 20, 1973 granting defendant's motion for a more definite statement be denied;

2. That within thirty days from the date of service of this order—with no extension to be allowed save for extraordinary circumstances—plaintiffs shall file a more definite statement in the form of an amended complaint for each and every protest number listed in the schedule annexed hereto which, in addition to or in lieu of the allegations of the original complaints, as appropriate, shall set forth the following allegations in separately numbered paragraphs:

a. The specific merchandise which is the subject of plaintiffs' complaints;
b. The rate of duty and item number under which plaintiffs claim the merchandise was assessed;
c. The rate of duty at which plaintiffs claim the merchandise should have been assessed under the item number claimed applicable by plaintiffs;
d. The date of liquidation;
e. The date and place where the protest was filed.

3. That plaintiffs' motion for leave to take an interlocutory appeal pursuant to rule 13.2(a) be denied.

[7] In reaching this conclusion, I am quite mindful of my order of August 13, 1973 in *Goldfarb* v. *United States*, Court No. 68/46992, which set aside a previous order and denied, under circumstances quite similar to those presented here, defendant's motion for a more definite statement. In light of the considerations set forth in the present opinion, I am persuaded that my August 13, 1973 order in *Goldfarb*—which was issued without opinion—was erroneous.

(C.R.D. 73–32)

WORLD MART, INC. *v.* UNITED STATES

Opinion and Order on Defendant's Motion to Strike Complaint

Court No. R64/24029

[Motion denied without prejudice.]

(Dated November 30, 1973)

Cassel and Benjamin (*Julian R. Benjamin* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*Glenn E. Harris*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant has moved to strike the complaint filed in this action, which is captioned alternatively:

I. WORLD MART, INC., a Florida corporation, Plaintiff, vs. UNITED STATES, Defendant,	COURT NUMBER Action No. R_____ October, 1970 Reserve File Item No. _____
OR	
II. PHILIP J. BERNSTEIN ENTERPRISES, Plaintiff, vs. UNITED STATES, Defendant.	COURT NUMBER Action No. R64–24029 October, 1970 Reserve File Item No. 650.5520 FLATWARE

It is noted that the initial paragraph of the complaint provides a space in which to indicate "by Roman numeral I or Roman numeral II" whether World Mart, Inc. (Roman numeral I) or Philip J. Bernstein Enterprises (Roman numeral II) is the plaintiff in the action. Inasmuch as Roman numeral II appears in the space so provided, the complaint thus designates Philip J. Bernstein Enterprises as the plaintiff.

Defendant contends that Philip J. Bernstein Enterprises is not the actual plaintiff in this appeal for reappraisement, and hence is not authorized to file the complaint pursuant to rule 4.4. No opposition or other response to defendant's motion to strike has been filed on behalf of either Philip J. Bernstein Enterprises, which is designated as the plaintiff in the complaint, or by World Mart, Inc., the actual plaintiff

who filed this appeal for reappraisement with the collector of customs at the port of Miami.

At the outset, I wish to stress that the caption of the complaint in this action should contain the name of but one plaintiff, rather than the names of two plaintiffs in the alternative. Such latter caption unnecessarily triggers confusion and misunderstanding, and undoubtedly is responsible for the error in designating Bernstein as the party-plaintiff in the complaint.[1] In point of fact, by virtue of filing the appeal for reappraisement, World Mart, Inc. is the sole "plaintiff" in this action within the purview of rule 4.4, and the caption of the complaint should reflect this fact.

While it is true that World Mart, Inc. is the actual plaintiff, rather than Philip J. Bernstein Enterprises, defendant's motion to strike the complaint will be denied without prejudice to a reconsideration thereof for the reason that plaintiff's attorney of record has not been served with a copy of the motion, and thus has had no opportunity to respond to the motion by filing an amended complaint or otherwise.

The complaint was signed in the following manner:

CASSEL AND BENJAMIN AND BRIAN R. HERSH
By (Signature)
BRIAN R. HERSH, Attorneys for Plaintiff
602 Biscayne Building, 19 W. Flagler St.
Miami, Florida 33130, Tel: 379–1641

The certificate of service attached to defendant's motion recites that service by mail was made upon:

CASSEL AND BENJAMIN AND BRIAN R. HERSH
602 Biscayne Building, 19 W. Flagler St.
Miami, Florida 33130

From the foregoing documents, it would appear that service of defendant's motion was proper. However, this is not the situation as will appear from the following circumstances.

I shall first discuss the status of Brian R. Hersh. While it is true that Mr. Hersh signed and filed the complaint (ostensibly on behalf of Bernstein), he has not filed a notice of appearance in this case on

[1] While seemingly anomalous in view of the nature of the present motion, defendant has erroneously captioned its motion papers Philip J. Bernstein Enterprises v. United States, which is not the proper title of this action. To comply with rule 4.3(a) defendant's motion papers should be captioned in accordance with the correct title of the action, viz.: World Mart, Inc. v. United States. The erroneous caption on the motion papers has caused an additional source of confusion in this matter when the very issue presented concerns the proper party-plaintiff.

behalf of World Mart, Inc., the actual plaintiff. Thus, Mr. Hersh is not regarded as plaintiff's (World Mart, Inc.) attorney of record.[2]

Turning now to Cassel and Benjamin, I have noted that said firm filed a notice of appearance on behalf of World Mart, Inc., as required by rule 16.3(a), thus constituting that firm as plaintiff's attorney of record.[3] I have further observed from such notice of appearance that the office address of Cassel and Benjamin is Suite 501 Flagler Federal Building, 111 Northeast 1st Street, Miami, Florida 33132. This address is different from the address shown on the complaint filed by Mr. Hersh and on defendant's certificate of service.

In light of the foregoing facts, it is clear that defendant's motion was not served upon plaintiff's attorney of record (Cassel and Benjamin) at its office address, as required by rule 4.1(a)(2).[4] Moreover, there is nothing in the court's file to indicate that Mr. Hersh, who it is emphasized is not plaintiff's attorney of record, is authorized to accept service of motion papers at his office located at 602 Biscayne Building, 19 W. Flagler St., Miami, Florida 33130 on behalf of Cassel and Benjamin.

Under all of the circumstances herein, and to avoid any possible prejudice to plaintiff or its counsel, defendant's motion is hereby denied, but without prejudice to a reconsideration thereof at such time that appropriate proof is filed with the court showing service of a copy of defendant's motion upon Cassel and Benjamin at their office address, as prescribed by rule 4.1.

---

[2] Unlike the complaint in the district courts which commences a civil action pursuant to rule 3 of the Fed. Rules Civ. Proc., 28 U.S.C., a complaint in this court pursuant to rule 4.4 does not initiate an action. Thus, the complaint signed by Mr. Hersh is not a "paper commencing an action" within the purview of rule 16.3(b), which relieves attorneys from filing a separate notice of apppearance if their name and address appear in a summons, or other paper commencing an action (i.e., protest or appeal for reappraisement).

[3] Rule 16.3(a) provides: (a) Notice of Appearance: Attorneys authorized to appear in actions pending before the court shall file notice thereof in writing with the clerk. Such notice shall state the title and court number of the action, and the name, address and telephone number of the attorney or attorneys so appearing. The notice shall be substantially in the form as set forth in Appendix F.

[4] Rule 4.1(a)(2) provides, so far as pertinent: "Every * * * written motion * * * shall be served upon each of the parties affected thereby and filed with the court in the following manner: * * * (2) upon a party other than the United States, by delivery or by mailing a copy to the *attorney of record for such party at his office address*". (Emphasis added.)

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *December 3, 1973.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1010	Boe, C. J. November 27, 1973	B & H Importing Corp.	69/10086	Item 706.24 40%	Appraisement and liquidation void; protest premature and dismissed; entry remanded to regional commissioner to take appropriate action in assessment of duty upon footwear imported in containers of usual types ordinarily sold at retail with their contents	Judgment on the pleadings	New York Footwear imported in containers
P73/1011	Boe, C. J. November 27, 1973	Fanon Electronic Industrial, Inc.	70/65611	Item 684.62 14%	Item 685.25 10%	Agreed statement of facts	New York Intercoms
P73/1012	Boe, C. J. November 27, 1973	Morris Friedman	64/1839	Par. 397 17%	Par. 339 11%	Judgment on the pleadings	Philadelphia Candlesticks, holders, and menorahs
P73/1013	Boe, C. J. November 27, 1973	General Electric Company	70/44642, etc.	Item 684.70 15% Item 685.90 17.5%	Item 685.22 12.5%	Judgment on the pleadings	Utica (Buffalo) Earphones and jacks

P73/1014	Boe, C.J. November 27, 1973	General Electric Company	70/52085, etc.	Item 684.70 15%	Item 685.22 12.5%	Judgment on the pleadings General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	Utica (Buffalo) Earphones
P73/1015	Boe, C.J. November 27, 1973	John Hull Cutlers Corp., d/b/a General Silver Co.	68/62774	Item 651.75 48.71%	Item 651.75 2¢ each and 12.5%	Judgment on the pleadings Import Associates of America et al. v. U.S. (C.A.D. 961)	New York Flatware sets, tool sets, etc.
P73/1016	Boe, C.J. November 27, 1973	Import Associates of America, Inc.	66/45266, etc.	Item 651.75 Various ad valorem equivalent rates as set forth in schedule A, attached to decision and judgment, in column headed "Assessed Ad Valorem Equivalent Rate"	Item 651.75 At appropriate rates set forth in column on said schedule headed "Claimed Rate"; the specific rate or specific portion of the compound rate being applied once against each tool, knife, fork, spoon or other utensil in the set	Import Associates of America et al. v. U.S. (C.A.D. 961)	Chicago Flatware sets
P73/1017	Boe, C. J. November 27, 1973	Rosenel International Corp.	66/30280	Item 774.60 17%	Item 660.90 12%	Summary judgment	New York Pumps, or pumps with syphon

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1018	Boe, C. J. November 27, 1973	United China & Glass Co.	70/56372	Item 533.73 45% and 10¢ per doz. pcs.	Item 534.94 45%	Judgment on the pleadings U.S. v. The Baltimore & Ohio R.R. Co. a/c United China & Glass Company (C.A:D. 719) W. Kay Company, Inc. v. U.S. (C.D. 2484) New York Merchandise Co., Inc. v. U.S. (C.D. 3463)	New Orleans Decorated porcelain cups and saucers
P73/1019	Rao, J. November 27, 1973	Harpers International, Inc.	69/40241	Par. 923/1559(a) 20%	Par. 1537(b)/ 1559(a) 12½%	Devon Tape Corp. v. U.S. (C.D. 2856)	New York Electrical tape composed wholly or in c.v. of vinyl material
P73/1020	Ford, J. November 27, 1973	Border Brokerage Company, Inc.	69/25144, etc.	Item 685.90 15.5%, 14% or 12%	Item 518.44 0.225¢, 0.2¢ or 0.15¢ per lb.	Border Brokerage Co., Inc. v. U.S. (C.D. 4014)	Blaine (Seattle) Circuit breaker parts in part of asbestos and hydraulic cement
P73/1021	Newman, J. November 27, 1973	American Laubscher Corp.	70/36943	Item 720.94 26%	Item 680.45 7%	Judgment on the pleadings American Laubscher Corp. et al. v. U.S. (C.D. 4006)	New York Pinions and gears, and assemblies thereof
P73/1022	Newman, J. November 27, 1973	Balsa Equador Lumber Co.	69/39487	Item 207.00 15%	Item 202.53 4%	Judgment on the pleadings	San Francisco Balsa lumber

P73/1023	Newman, J. November 27, 1973	Gene Miller, Atwood Imports, Inc.	65/19584	Par. 353 12½%	Par. 372 10½%	Judgment on the pleadings Castelazo & Associates et al. v. U.S. (C.D. 4027) and on reh. Gene Miller et al. v. U.S. (C.D. 4249)	Los Angeles "Rye" type DEB/1 Double End boring machine and electric motor equipment
P73/1024	Newman, J. November 27, 1973	RCA Corporation	70/44557, etc.	Item 684.70 10%	Item 685.25 8.5%	Judgment on the pleadings General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021)	Los Angeles Earphones
P73/1025	Newman, J. November 27, 1973	Wal Rich Corp. et al.	66/23295, etc.	Item 657.35 1.275¢ per lb. plus 15%; 1¢ per lb. plus 12%; or 0.8¢ per lb. plus 10.5%	Item 654.00 10%, 8% or 7%	The Westbrass Company v. U.S. (C.D. 4293)	New York Duo strainers, duplex sink strainers, showerstal strainers, etc.
P73/1026	Newman, J. November 27, 1973	Universal Transcontinental Corp.	67/47925	Item 791.65 20%	Item 685.22 12.5%	Lafayette RadioElectronics Corp. v. U.S. (C.A.D. 977)	New York Leather cases imported with radios with which they are used
P73/1027	Re, J. November 27, 1973	Borneo Sumatra Trading Co., Inc.	67/79654	Par. 405 20%	Par. 1403 12½%	Borneo Sumatra Trading Co., Inc. v. U.S. (C.D. 3980)	Baltimore Crownboard, Crown Wallboard or Hardboard, two sides veneer
P73/1028	Re, J. November 27, 1973	Fedtro, Inc.	70/51626, etc.	Item 774.60 13.5% and11.5%	Item 660.94 8% and 7%	Fedtro, Inc. v. U.S. (C.D. 4050)	New York Automatic drain or portable siphon pumps

Appeal to United States Court of Customs and Patent Appeals

APPEAL 74–19.—Mego Corp. *v.* United States.—"PLASTIC BAGATELLE GAME"—TOYS—GAMES—TSUS. Appeal from C.D. 4471.

Merchandise invoiced as "Plastic Bagatelle Game" was assessed at 35 percent ad valorem under item 737.90, Tariff Schedules of the United States, as toys and parts of toys, other. Plaintiff-appellant claimed that the merchandise was classifiable, alternatively, as: Bagatelle equipment, other than balls, under item 734.10, at 16⅔ percent; game machines, including games having mechanical controls for manipulating the action, under item 734.20, at 11.5%; games played on boards of special design, under item 734.15, at 20 percent; or as puzzles, game, sport, gymnastic, athletic, or playground equipment, all the foregoing, and parts thereof, under item 735.20, at 20 percent. After presentation of the evidence, a defendant-appellee moved for dismissal on the ground that plaintiff failed to prove a prima facie case. The court granted the motion and made the following conclusions of law in entering a judgment overruling the plaintiff's claims and dismissing the action: The imported merchandise is not bagatelle equipment; the imported merchandise is not a puzzle, nor is it sport, gymnastic, athletic, or playground equipment; plaintiff has failed to establish, prima facie, that the imported merchandise was chiefly used as a game; plaintiff has failed to overcome the presumption that the imported merchandise was chiefly used for the amusement of children or adults and therefore was properly classified as a toy.

It is claimed that the Customs Court erred in dismissing the protest and in entering judgment for the defendant sustaining the classification of the customs officials; in not sustaining the claim for classification under item 734.20, 734.15, or 735.20, *supra;* in not describing the merchandise properly and in accordance with the characteristics found in exhibits 1 and 2, as a pin ball game; in finding that plaintiff failed to establish prima facie that the merchandise was chiefly used as a game; and in finding that plaintiff has failed to overcome the presumption that the merchandise was chiefly used for the amusement of children or adults and therefore was properly classified as a toy.

Tariff Commission Notice

Investigation by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *December 13, 1973.*

The appended notice relating to an investigation by the United States Tariff Commission is published for the information of Customs officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[TEA–F–57 and TEA–W–219]

PETITIONS OF THE GLOBE CORPORATION AND ITS WORKERS FOR DETERMINATIONS UNDER SECTIONS 301(c)(1) AND 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigations

On the basis of petitions filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the Globe Corporation, Cincinnati, Ohio, and its workers, the United States Tariff Commission, on November 29, 1973, instituted investigations under sections 301(c)(1) and 301(c)(2) of the said Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with men's suits, coats and trousers, knit and not knit, of wool and of manmade fibers (of the types provided for in items 380.02, 380.04, 380.57, 380.61, 380.63, 380.66, 380.81 and 380.84 of the Tariff Schedules of the United States) produced by the aforementioned firm, are being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to such firm and/or the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigations may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register.*

The petitions filed in this case are available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued November 30, 1973.

Index

U.S. Customs Service

Protest Review Decisions

Court of Customs and Patent Appeals

Customs Court

Tariff Commission Notice

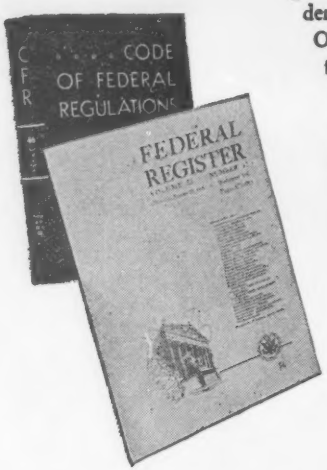
UNITED STATES
GOVERNMENT PRINTING OFFICE
PUBLIC DOCUMENTS DEPARTMENT
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

POSTAGE AND FEES PAID
U.S. GOVERNMENT PRINTING OFFICE
375

U.S.MAIL

The FEDERAL REGISTER . . .



publishes daily the full text of Presidential Proclamations, Executive Orders, and Reorganization Plans, together with Federal agency rules, regulations, notices, or similar documents having general applicability and legal effect.

The FEDERAL REGISTER is keyed to, and is a daily supplement to the *CODE OF FEDERAL REGULATIONS.* Sold by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, the FEDERAL REGISTER is priced at $25 a year; $2.50 a month.

The CODE OF FEDERAL REGULATIONS is a *codification* of rules and regulations issued by the administrative agencies of the Federal Government. Regulatory material published in the *Federal Register* is keyed to the *Code of Federal Regulations* which is published under 50 titles, pursuant to section 11 of the Federal Register Act, as amended.

For SAMPLE COPY of the FEDERAL REGISTER, write to:

Director, Office of the Federal Register,
National Archives and Records Service,
Washington, D.C. 20408

U.S. GOVERNMENT PRINTING OFFICE: 1973

C16